

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO ERVAS, DEFENDANT-APPELLANT.

G.R. Nos. 51549-51. May 11, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Accused-appellant, Rogelio Ervas, was charged with Rape in three separate Informations before the then Court of First Instance of Sorsogon, docketed as Criminal Cases Nos. 702, 729 and 730, upon criminal complaint filed by DOLORES del Monte, the offended party, a girl, eleven years of age.

Upon arraignment, accused-appellant pleaded not guilty, and after a consolidated trial, he was acquitted in Criminal Cases Nos. 702 and 729. In Criminal Case No. 730, he was found guilty, as charged, and sentenced to suffer the penalty of reclusion perpetua; to pay DOLORES the sum of P5,000.00 as moral damages, P3,000.00 as exemplary damages, and to pay the costs.

Hence, this appeal.

The prosecution version, insofar as the last two incidents complained of are concerned, has been summarized in the People's Brief thus:

"On or about November 20, 1977, while complainant was in her residence in barangay Carriedo, Gubat, Sorsogon, appellant dropped by. As complainant's parents were out that time selling hogs in town (p. 19, t.s.n., October 18, 1978) appellant dragged the complainant to a nearby santol tree. At said place, appellant undressed himself and afterwards undressed likewise the complainant. Thereafter, appellant placed himself on top of complainant, inserted his sex organ into the latter's sex organ and made an 'up and down' movement. Complainant felt pain in her vagina (pp. 27-29, t.s.n., October 17, 1978) although the former's sex organ only partially penetrated hers (p. 13, t.s.n., October 18, 1978). Complainant could not shout as her mouth was covered by appellant's right hand, (pp. 13-14, *Supra*). After the sexual act, appellant put on his clothes, similarly, complainant put on her clothes. Appellant gave complainant twenty-five centavos and warned her not to reveal the incident to anybody, otherwise he would kill complainant's family (pp. 29-30, *Supra*).

At about three o'clock in the afternoon of November 26, 1977, appellant was in the complainant's house. He requested complainant's younger brother, Junior, to buy some cigarettes and thereafter asked complainant where he could get some guavas. Complainant answered that there are no more guavas as she had already gathered them. Nevertheless, appellant went to the place where complainant gathered said fruits and was followed by complainant and her sister Nida (pp. 5-6, t.s.n., October 3, 1978).

Upon complainant's return to the house, her mother was surprised why complainant's blouse was already tucked in. Inspecting complainant's blouse, her mother found a one-peso coin. Complainant was asked where she got the money and she answered that it was given by appellant. Not satisfied with the answer, her mother demanded for an explanation and threatened to whip complainant if the latter will not tell the truth. At this juncture, Erlinda Diesta, aunt of complainant arrived and joined in questioning the latter why appellant gave her money. (pp. 7-10,

t.s.n., October 3, 1978).

As complainant refused to answer the questions asked of her by her mother and aunt, Erlinda Diesta, the latter, decided to bring complainant to her grandmother's house to extract the real truth from complainant.

On their way, however, complainant informed Erlinda Diesta that the former had a sexual intercourse with appellant (pp. 17-18, Supra).

Returning to the complainant's house, Erlinda Diesta informed complainant's mother that her daughter was raped by appellant. Complainant then admitted to her mother that she was raped by appellant on three occasions, the first being on November 18, 1977, which incident was the subject matter of Criminal Case No. 729 wherein appellant was acquitted, the second time being on November 20, 1977 subject matter of the instant appeal, and third time, on November 26, 1977, which incident was the subject matter of Criminal Case No. 702, wherein appellant was likewise acquitted by the trial court (pp. 4-5, t.s.n., Supra).

On November 28, 1977, complainant was medically examined (p. 11, Supra) by Dr. Antonio Falcotelo who subsequently issued a medical certificate (Exh. 'B') which reads:

'Findings:

- Vulva Slightly gaped
- Vagina admits 1 finger easily
- Hymen lacerated with healed (sic) scar at 9:00 o'clock
- No apparent signs of external Physical injuries."[1]

The defense is one of total and general denial, appellant alleging that the charges were pure fabrication, motivated by a strong desire for retaliation against the Ervases for having put the del Monte family to shame.

Thus, appellant testified that Antonio del Monte (DOLORES' paternal uncle) was caught in the act of stealing coconuts in the plantation of one Alfredo Hababag, by appellant's brother, Salvador Ervas, the tenant and overseer of said property who lost no time in reporting the incident to Hababag, thus paving the way for the filing by Hababag of a criminal complaint against Antonio, and that upon release of Antonio from jail through the posting of bail, he had sworn to take vengeance on the Ervases.

Appellant and his brother, Salvador, further testified that on various other occasions, the latter had also caught Dolores herself, her father, Alfonso del Monte, her brothers and sisters, and her cousin Armando Diesta (son of prosecution witness Dominga del Monte) stealing coconuts in the land of Hababag. But on advice of the owner, no complaints were filed.

Appellant claims that the Court a quo gravely erred in convicting him (1) despite facts and circumstances which cast grave doubts on the credibility of prosecution evidence, and (2) despite absence of evidence beyond reasonable doubt to sustain the same.

Appellant faults the Trial Court for relying heavily on the medical findings of "laceration of DOLORES' hymen with healed scar at nine o'clock and that her vagina admits one finger easily." He takes issue with that Court's conclusion that the lacerated hymen was caused by the entry of his sex organ into complainant's vaginal canal arguing that it was more through "manipulation" in his having "fingered" her sex organ, an act conveniently referred to as a necessary act preliminary to actual coitus. Thus, appellant claims, considering DOLORES' admission of only partial penetration during the incident of November 20, 1977, he should be convicted only for the lesser offense of acts of lasciviousness.

The contention is utterly baseless. As the Solicitor General has aptly pointed out:

"Undoubtedly, complainant's lacerated hymen at 9:00 o'clock and the finding that her vagina easily admits one finger are evidence of the highest order that an intercourse was in fact committed upon complainant. Said physical fact speaks more eloquently than a hundred witnesses (People vs. Sacabin, L-36638, June 28, 1974). Moreover, to constitute the crime of rape mere entry of the male organ into the labia of the woman, without reaching the hymen is sufficient (People vs. Hernandez, 49 Phil. 980, 982)."[2]

Of significance is it to note that when a woman testifies that she has been raped, she says in effect all that is necessary to show that rape was committed[3] provided her testimony is clear and free from serious contradictions, and her sincerity and candor, free from suspicion.[4] The defense has not satisfactorily proven that DOLORES, a young girl barely eleven years of age, had any ulterior motive to accuse appellant of so serious an offense and had indulged in mere "fabrications". The Trial Court had found "her degree of understanding is not just too comprehensive to entrust her with a confabulation too complicated and too evil for her to grasp". As she had testified clearly and unmistakably in respect of the three incidents:

x x x x x x x

"q In the evening of that day (November 18, 1977) when your mother sold a pig, do you remember where you went?

a Yes, sir.

q Where did you go?

a To Yaya Paring's place.

q And, what did you do there?

a I played.

q What time did you return?

a Already dark.

q When you returned, did anything happen to you?

a Yes, sir.

q What was that that happened?

a This Rogelio Ervas was already following me.

q When Rogelio followed you what happened?

a I was dragged to a place near the dita tree.

q After Rogelio dragged you near the dita tree, what did Rogelio do with you?

a He removed my clothes.

q After that, what did Rogelio do?

a He also removed his clothes.

q After removing his clothes, what happened?

a He placed himself on top of me.

q Then what happened?

a Rogelio inserted his penis into my vagina.

q Was the penis of Rogelio inserted, the whole penis?

a Yes, sir.

q After that, what happened?

a He went away.

q What happened to you after Rogelio was on top of you and inserted his penis?

a It was painful.

q Aside from feeling pain, what else did you feel?

a I felt sticky substance.

q After feeling that sticky substance, what did Rogelio do?

a He went away.

q Did he say anything to you?

a Yes, sir.

q What did Rogelio say?

a Rogelio told me not to tell anybody about the incident because if I said so, he will kill all of us.

q Did he give you anything?

a Yes, sir.

q What did Rogelio give you?

a P1.00

q What did you do with the P1.00?

a I used it as my baon.

q Did you report this matter to your mother?

a I did not.

q Why?

a Because Rogelio would not want me to tell anybody about it.

q Was this incident of Rogelio having sexual intercourse with you repeated?

a Yes, sir.

q When was it happened?

a It was a Sunday.

q How many days after he had first sexual intercourse with you?

a Three days after the first.

q And, where did this happen?

a Near the santol tree.

q And where were your parents then?

a My father was in the cockpit while my mother was buying rice and viand.

q In the santol tree what did Rogelio do to you?

a Upon reaching the place near the santol tree, he again remove my dress.

q And, after removing your dress, what did he do?

a He also removed his clothes.

q When you were already undress and also Rogelio, what happened?

a He again placed himself on top of me.

q And, after placing himself on top of you, what else did he do to you?

a He again inserted his penis to my vagina.

q And, how deep was the penetration?

a As deep as this (witness indicating the length by pointing the right thumb which has a line and from that point up to the tip of the finger which is about 1 1/2 inches from the second phalanx up to the tip of the second finger).

q Did you feel pain?

a Yes, sir.

q Where was the pain?

a In my vagina.

q Did you also feel that sticky watery substance in your vagina?

ATTY. BORROMEO:

Objection, Your Honor.

COURT:

Sustained.

FISCAL MADRID:

q Did you shout?

a I did not, he covered my mouth.

q After Rogelio had finished his urges, what did he do?

ATTY. BORROMEO:

We object, Your Honor, no basis.

COURT:

Reform the question.

FISCAL MADRID:

q After Rogelio inserted his penis to your vagina, what else did he do?

a He made an up and down movement.

q Then after that, what happened?

a He put on his pants and I likewise put on my panty.

q Then what did he do?

a He gave me P0.25.

q Did he tell you anything?

a Yes, sir.

q And, what did he tell you?

a He told me not to tell anybody, for if I did so, he will kill of all us.

q Was this sexual intercourse done by the accused repeated again?

a Yes, sir.

q Where did it happen?

a In the place where tongao-tongao grows.

q About what time?

a At about 3:00 o'clock in the afternoon.

q While you were there, what happened there in the tongao-tongao?

a He again remove my dress and he likewise remove his clothes.

q After that what did he do?

a He again placed himself on top of me.

q And, what else did he do?

a After putting himself on top of me, he again made push and pull movement.

q What else did he do?

a He inserted his penis to my vagina.

q Was the whole penis able to penetrate in your vagina?

a No, sir.

COURT: (To Witness)

q Did the entire length of his organ penetrate your vagina?

a No, Your Honor.

FISCAL MADRID:

q While Rogelio was pushing and pulling on top of of you, what did you feel?

a It was painful.

q What part of your body was painful?

a My vagina.

q Did you see the penis of Rogelio?

a Yes, sir.

q How big was the penis of Rogelio?

a As big as the forearm of my younger brother."[5]

The foregoing testimony is so candid and straightforward as to leave no room for doubt that appellant had carnal knowledge with a woman under twelve years and is thus guilty of rape even assuming that force or intimidation were not used or even if the woman had not been deprived of reason or otherwise unconscious.[6] It eloquently disproves appellant's contention that it was merely "manipulation" that had caused the laceration of complain-ant's hymen and that he should only be found guilty of acts of lasciviousness.

WHEREFORE, the judgment appealed from is hereby af-firmed except as to the damages awarded, which is hereby increased to a lump sum amount of P15,000.00. Costs against accused-appellant, Rogelio Ervas. SO ORDERED.

Plana, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

Teehankee, J., (Chairman), no part.

[1] pp. 3-6, People's Brief.

[2] p. 9, People's Brief.

[3] People vs. Royeras, 56 SCRA 666 (1974).

[4] People vs. Olalia, L-50669 - March 12, 1984.

[5] T.s.n., October 17, 1978, pp. 85-91, Rollo.

[6] Article 335, Revised Penal Code.

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