

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO VERGARA Y FADINO, ACCUSED-APPELLANT.

G.R. Nos. 66572-73. April 25, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

ROGELIO VERGARA, the accused, is the uncle of Luzviminda Infante, the accuser. Rogelio's wife is the sister of Luzviminda's father.

Rogelio was accused of rape and attempted rape by Luzviminda. The rape was said to have been committed on October 26, 1979, while the attempted rape was said to have taken place on March 3, 1980, both in Manila.

Judge Augusto E. Villarin of the Regional Trial Court of Manila tried the two cases, found Rogelio guilty in both and pronounced the following judgment:

"WHEREFORE, this court finds the accused GUILTY beyond reasonable doubt of the crimes of rape and attempted rape as charged in the Informations and sentences him to suffer reclusion perpetua for the first offense; and from four (4) years, two (2) months and one (1) day, as minimum, to six (6) years, as maximum of prision correccional for the second; to pay the offended party the amount of P10,000.00 by way of moral damages; and to pay the costs." (Expediente, Vol. I, p. 309.)

The facts according to Judge Villarin, are as follows:

"At the early age of 9, Luz, as the complainant is called, daughter of Cornelio Infante from Aklan, was brought to Manila to live with Cornelio's sister Virginia Infante and her husband, the accused Rogelio Vergara. As the Vergara spouses were childless, they agreed at their expense, to bring Luz up and sent her to school as if she were their own child, with the expectation that someone can look after them when they grow old. They treated her as a real daughter, and Luz, in return, looked upon them as if they were her own parents. She called the spouses as 'Nanay Viring' and 'Tatay Rogel'. Luz completed her elementary and high school education under the care and support of the Vergaras (Exhs. "A" and "B"). At the time these cases were filed in the City Fiscal's Office, Luz was in her fourth year at the University of the East completing a Bachelor of Science in Commerce degree. Later, the Vergaras adopted a 5-month old boy who was 11 years old at the time of the incidents involved (Exh. "C"). Life went on normally for the Vergaras, Luz and their adopted child, until the dawn of October 26, 1979. At around 4:00 a.m. of that day, Friday, Mrs. Vergara woke up early to go to Quiapo to hear mass at the church. She woke up Luz and told her to go down and wash the dishes and kettles used the night before. At that time Luz was sleeping with a younger sister on the mezzanine floor of their house, while the spouses slept on the ground floor. Mrs. Vergara then left and Luz started washing the dishes. After a while, while thus occupied, Luz suddenly felt an arm around her neck from behind. She struggled to free herself but she was pulled down to the cement floor. She saw that it was 'Tatay Rogel' who was doing this to her. He sat on her stomach. She exclaimed. 'What are you doing to me, I am like your daughter!' He replied. 'Keep quiet or I will stab you in the neck.' She kept on struggling. Her panty was then torn off her body but the accused had difficulty in initially inserting his private part into hers, so he did something, 'fingering her organ', and ultimately had his way. She cried and cried. There was blood on the cement floor flowing from her private

part. She wiped the blood. (The findings of Dr. Marcial Ceñido, the Medico Legal Officer of the WPD as contained in his Medical Certificates, Exhs. "H" and "H-2" and as testified to by him are consistent with forced sexual intercourse.) Luz, however, did not tell her 'Nanay Viring' what happened.

"As far as the rest of the Vergara household were concerned, everything appeared normal on the surface. Luz remained silent about what happened to her for fear that if she spoke out, violence may erupt between her family and that of her 'Tatay Rogel's' and that the Vergara spouses may no longer support her schooling in Manila.

"On the evening of March 3, 1980, while Luz was sleeping on the mezzanine floor with her younger sister Irene who was then 11 years old, she was awakened by someone touching her breast. She saw that it was the accused on top of her, completely naked, and felt a knife pointed against her neck. She was then wearing a duster. She felt her panty being removed. She tried to make noises with her feet to awaken her 'Nanay Viring' whom she knew was sleeping on the ground floor immediately below her. She felt the accused trying to insert his private part into hers. She kept on stamping her feet against the floor. A few seconds later, 'Nanay Viring' came up. She saw the accused completely naked on top of Luz and embracing her. She saw Luz struggling and pushing, with her panty at her ankle. When the accused became aware of his wife, he stopped what he was trying to do, stood up and took his wife downstairs muttering all the time 'nothing happened'. Luz, in the meantime, sat up crying. She then saw the knife (Exh. "M") left by the accused. She kept it. The next morning she talked to her 'Nanay Viring'. She told her that she wanted to file a case against her 'Tatay Rogel'. That was when she told her about the other incident. 'Nanay Viring' then called the other aunt of Luz, whom the former called 'Manang Basilica.' Later, Mrs. Vergara and Basilica accompanied Luz to the police." (Expediente, Vol. I, pp. 306-307.)

Rogelio admitted having had sexual intercourse with Luzviminda. In fact he claimed that they had sex on at least two other occasions because they were sweethearts. For this reason he questions the judgment against him. He claims that the trial judge erred in believing Luzviminda's story instead of his story. Thus the instant case fits the classic pattern: only the participants testified to the alleged sexual abuse; the accused denied the occurrence, put up the defense he was somewhere else, or claimed that there was mutual consent. The problem: who was telling the truth?

Judge Villarin answered the question when he convicted the accused. Should this Court which has before it only the inanimate record of the case reverse Judge Villarin?

The legal doctrine which has been enunciated in a long line of decisions issued by this Court is that the conclusions and findings of facts by the trial court are entitled to great weight and will not be disturbed on appeal because the trial court was in a better position to examine the real evidence as well as to observe the demeanor of the witnesses while testifying in the case. The only exception to the rule is when there appears in the record some fact or circumstance of weight and influence which had been overlooked or the significance of which had been misinterpreted.

We have examined the record and there is nothing in it to justify the application of the exception to the rule. On the contrary, the rule is fortified by the following:

1. No less than Virginia Vergara, the wife of the accused, testified against him.

Virginia testified that Luzviminda, the complainant, is her niece; that Luzviminda had lived with her family since she was 9 years old because "Our agreement with my brother [Luzviminda's father] is that we will raise Luzviminda, we will send her to school so that when we grow old there will be somebody to look after us" (TSN, p. 464); that in the early morning of March 4, 1980, she woke up because she heard "kumakalampag" where Luzviminda was sleeping so she went there and I saw my husband naked and lying on top of my niece Luzviminda" (TSN, p. 500); that Luzviminda was struggling and kicking; that Luzviminda told her later "that

the thing that happened last night was not the only one; there is still another occasion" (TSN, p. 513); that she executed an affidavit before the police [Exhibit J where she narrated the incident described above]; that she loves her husband very much but she testified against him "Because he has sinned against the law, he has violated our marriage vows; he has disrespected our matrimonial vows" (TSN, pp. 541-542).

The testimony of Virginia Vergara gives credence to that of Luzviminda. For as Judge Villarin said:

"Most damning perhaps in this unfortunate case is the wife of the accused testifying against him. Mrs. Vergara is so situated in the household that more than this court is in a position to say from the incident she witnessed, from the behavior of Luz and her husband, and from other little things seen or known only to her whether her husband is guilty or not. It is most unnatural for a wife to bear witness against her husband (with the consent or without objection from the accused in this case) knowing fully well that her husband may be imprisoned for life or meted out the death penalty unless she is convinced of his guilt.

"x x x x.

"Furthermore, why would a wife encourage her niece to file fabricated rape charges against her husband with the risk of the penalty of death or life imprisonment if the accused and the complainant are only 'sweethearts'? It is unnatural for a wife not to take action against her niece who in this case, would be the 'other woman' unless the charges are true." (Expediente, Vol. I, p. 309.)

2. The claim of the appellant that he and Luzviminda were sweethearts and had sex by mutual consent is too crude to be convincing.

Rogelio Vergara who was described by Judge Villarin as "testifying in a cocky manner, without remorse whatsoever, using uncouth language at times" said that early in March 1979, he and Luzviminda became secret lovers; that they kissed and fondled each other's private parts but it was not until April when they had sexual intercourse in the kitchen and he discovered that she was not a virgin; and that they had sex again in the later part of April.

The appellant's contention that Luzviminda was his lover is not congruent with Filipino culture and tradition. It is simply unbelievable for a 20-year old unsophisticated girl to have an affair with a 45-year old foster father under the very nose of her foster mother who had cared for her since her tender years.

We find no reversible error to have been committed by the trial court.

WHEREFORE, the judgment against Rogelio Vergara is affirmed with the sole modification that the indemnity which he should pay to Luzviminda Infante is increased to P20,000.00. Costs against the appellant.

SO ORDERED.

Makasiar, (Chairman), Aquino, Escolin, and Cuevas, JJ., concur.

Concepcion, Jr., J., on leave.

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