

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN P. DAVID, ACCUSED-APPELLANT.

G.R. Nos. 72355-59. September 15, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Quezon City, Branch 106, finding appellant Juan P. David guilty beyond reasonable doubt of five counts of rape sentencing him for each count to suffer the penalty of reclusion perpetua and to pay indemnity of P30,000.00.

In Criminal Case No. Q-20893, the complaint reads:

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"x x x That on or about the month of May 1982, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, said accused, with lewd design, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of complainant MA. THERESA AGUILAR, a minor, six years of age, against her will and in her own house." (Rollo, p. 27)

In Criminal Cases Nos. Q-20894-97, the complaints read:

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"That on or about the first week of April, (second week of April, third week of May, and fourth week of May 1982) in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, said accused with lewd design, by means of violence and intimidation, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant LUZ DELGADO, against her will." (Rollo, p. 27)

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is summarized as follows:

"It appears that in late 1978, the accused Juan David met Adelaida Masupil (maternal aunt of the private complainant Ma. Theresa Aguilar). They both worked in the office of an architect. Jun was a married man. But Adelaida did not know this. Parenthetically, when she testified, the court observed that Adelaida is naive and impressionable.

"Six months after they were acquainted, Jun became Adelaida's boyfriend. After Valentine's day, 1979 they eloped. After the elopement, Jun confessed that he was a married man. She was angry, but he was able to mollify her. They went to live at the house of Jun's mother in Bacolor, Pampanga. They lived there for about a year.

"In December 1980, Adelaida's sister, Toribia Aguilar, invited them to live in her house at 35 Scout Castor Street, Toribia was going on business to Japan and Korea. She wanted her sister to take care of the children while their mother was abroad. They accepted the invitation and moved in.

"After they transferred to Toribia's house, Jun worked as a draftsman for another architect. Mainly, he did his work at home, particularly in his second floor bedroom. Here, he kept his tools and implements, including a long knife to cut paper with (Exhibits "F" and "16"). Adelaida said she frequently saw him cutting drafting paper, (Exhibit "V"). He usually reported to office only on a Friday or Saturday.

"Adelaida stayed at home with him. She kept an eye on the children. But eventually, they were able to hire a trustworthy babysitter. So, in March 1982, Adelaida accepted employment in the office of her sister Toribia. This office was opened only the month before. Toribia was engaged in entertainment promotions. Specifically, they took prospective Japanese employers on a survey of Manila nightclub entertainers and hired some of them for entertainment work in Japan. Sometimes the sisters worked until late at night, because of the nature of the job.

"Initially, Adelaida's family were lukewarm to Jun because they knew he was a married man. But for Adelaida's sake, they learned to accept the relationship. The two couples lived harmoniously in the Aguilar's house. Toribia said that he treated Jun as a brother and trusted him. She felt secure when she was abroad, because he and Adelaida were at home to take care of the children. At first, he was very kind to the children and always brought something home for them.

"But gradually, Adelaida noted that Jun's attitude changed, particularly with respect to Theresa. Adelaida said that for about three times, she saw Jun touch Theresa's vagina. 'Pinipisil-pisil niya na parang nanggigil'. At that time, Theresa was about four years old. When she saw the incident for the first time, Adelaida chose to ignore it, but suspicion raced in her mind.

The second time, she advised Theresa that if Jun did the act again, Theresa must tell Jun to stop, because Theresa's father would get angry if he knew. Later, Adelaida accosted Jun himself. He denied that she saw anything immoral, and claimed that he was merely playing with the children.

"Further, Adelaida testified that Jun used to engage in playful banter with the maid Luz. The latter would sometimes cry out to Adelaida: 'Ate Dea, eto si Jun, o.' The tone of Luz's voice also aroused Adelaida's suspicion, but she kept it to herself because she did not actually see Jun doing anything to Luz.

"One time, when Adelaida was working on a temporary basis, she went home at 7:30 p.m. She saw Jun and Theresa watching TV with the lights off. Adelaida was surprised and asked why the lights were off. Jun said that there was a brownout. This could not have been true, because the TV was on. Jun and the child Theresa were sitting side by side on the sofa.

"Luz said that Jun had a mean streak. When the children misbehaved, he maltreated them and denied them lunch. But Luz was afraid to precipitate a quarrel between the parents and Jun. Also, Luz was afraid Toribia might think she was not taking good care of the children.

"Luz believed that when Jun threatened to kill the children, he was perfectly capable of doing so.

"Jun usually went around the house wearing only a pair of short pants. He put on a shirt only at mealtime.

"In the household, Luz was not treated as an ordinary maid. Her deceased mother used to work as a temporary maid of the Aguilar family. When her mother reported to the Aguilar household, Luz tagged along. Her mother died in 1 January 1981. She entrusted Luz to the care of the Aguilar couple. Luz moved in with the couple. She left for a short while, but when Toribia returned from abroad, Luz also returned to the household, toward the end of 1981.

"The Aguilar couple treated Luz like a member of the family. She assumed various household duties, including babysitting the three girls.

"Luz testified that Jun raped her four times in the summer of 1982. The first time took place at about the first week of April, at about 2:00 p.m. Only the children were at home. The man of the house, Antonio Aguilar, was

in Japan. He is a professional singer.

"Jun shouted for her. She went up to his bedroom on the second floor. He said that he was sending her on an errand. But when she reached the room, Jun locked the door. He showed her photos of naked women which he took out from a plastic bag with the logo of National Bookstore.

"Jun forced her to read the literature that occupied the pornographic photos, but she refused. He spread out the photos on the bed and once more, forced her to read. She continued to refuse and tried to leave the room.

"Jun grew angry and forced her to lie down on the bed by holding her on both arms. With his left hand, he pinned her two arms down on the bed beyond her head. With his right hand, he held a knife about 8 inches long and threatened to kill her. He kissed her on the face and put the knife down on the floor, maybe about two meters away. She is not sure of the distance.

"Luz was wearing a blouse and skirt. Jun placed his right hand inside her skirt. He touched her two breasts. He forcibly removed her panty.

"Jun released her, stood up and removed his shorts. She tried to run away, but he boxed her. He lowered himself on top of her. Because he was stronger, he was able to force his sex organ inside hers. She felt pain. He moved on top of her for sometime, maybe for an hour.

"Luz felt that her vagina was bleeding. She passed her hand on her buttocks and saw blood. She tried to remove his penis because she was in pain, but he pumped faster.

"After this first incident, she confided what happened to the houseboy Danilo. But it was not until after the fourth incident that Danilo in turn told Toribia. Luz did not complain to Toribia, because Luz was afraid that Jun would carry out his threat to kill her.

"Toribia noticed that she had been crying, and asked her why. She answered that she had a headache. This was because Jun was present and staring her down.

"Furthermore, Luz believed that even if she told Toribia, the latter would not believe her. Luz thought that in a confrontation, the family would instead take Jun's version to be true because after all, he was Adelaida's husband.

"Luz believed the death threat because Jun customarily went around the house holding the knife. Apparently, this did not strike the rest of the household as unusual, because they knew he used the knife to cut paper with.

"When she was with other members of the household, Jun would always stare her down. He was able to intimidate her this way. Luz described Jun's demeanor in Tagalog as 'nanlilisik ang mata'.

"The second rape, took place about the second week of April, at about 4:00 p.m. Only the children were at home. Luz was fixing clothes in the maid's room on the ground floor. Suddenly, Jun entered the room and asked what she was doing. She demanded to know what brought him. He replied that he just wanted to see what was going on. She asked him to leave.

"Instead of leaving, he locked the door. She threatened to scream. If she did, Jun said, he would kill all the children. Although he was not then holding the knife, Luz felt afraid and believed his threat.

"He ordered her to stand up. He held her and laid her down on the bed. He prevented her from getting up. She resisted but to no avail, because he was stronger. He placed his hand across her mouth to prevent her from shouting. It did not occur to her to bite his hand. He raped her for the second time.

"After he finished, he repeated his threat. If she reported what happened, he would kill Toribia and the children.

"She did not report this incident because she was ashamed.

"The third rape took place at about the third week of May in the afternoon. Only the children were in the house. Both Luz and Jun were downstairs. He ordered her to fetch a drawing from his upstairs bedroom. She hesitated. He shouted at her. So, she went up. Unknown to her, he followed.

"He locked the door and forced himself on her. She refused. He picked up the knife that was lying on his table. He forced her down on the bed and forcibly penetrated her. Luz recounted that for about half an hour, he moved on top of her. Finally, he ejaculated a white sticky substance. After he was finished, he stood up. He warned her not to tell anybody. She felt afraid.

"The fourth rape took place at about the fourth week of May, at about 11:00 p.m. She was in the children's bedroom. The four children were sleeping in their bed. She was keeping them company and was sleeping in a separate bed. The bedroom door was locked.

"Apparently, Jun entered the bedroom by passing thru the adjoining bathroom. He lay down beside her and started kissing her. She awoke. He placed his hand across her mouth. He brandished the knife and warned her not to make a sound. He lay on top of her for about half an hour.

"She fought back. Although she was afraid because of the knife, she pushed him. The two of them fell on the bed, but none of the children awoke. He raped her for the fourth time.

"After he left, she did not wake up the children because she wanted to shield them from knowledge of such an ugly thing. She was unable to sleep for the rest of the night.

"She did not notice when Toribia and her husband arrived. She saw Toribia the next morning, but she did not report the matter because she was afraid.

"She was in turmoil. She decided to report what happened to Toribia. But she had to wait for the proper time. She missed her menstruation. Then, she learned that Theresa reported to her mother that Jun had molested the former. This emboldened her.

"Sometime in May, Theresa who was six years old was playing downstairs. Jun called her from his second floor bedroom. So, she dutifully complied. When she entered the room, he did not say anything. He made her lie down and took off her panty. He took off his shorts and briefs. She saw that his penis was exposed. He put his penis on her vagina. Theresa felt pain.

"The second rape also took place in Jun's room. Her sister Aurea, 5, was in the same room. Jun ordered them both to go to sleep. She saw that Aurea was very sleepy and instantly obeyed. She also closed her eyes.

"He took off her skirt and panty. Then, he took off his shorts and briefs. He inserted his finger inside her vagina. Both acts produced pain for her. She did not shout because if she did, then, Jun would know that she was not sleeping.

"Her parents arrived, maybe at 9:00 p.m. She did not tell them what happened, because Jun was at home and she was afraid of him.

"On 30 May 1982, a Sunday, Jun and Adelaida went out to church. Theresa told her mother what happened.

"Adelaida and Jun went to Pampanga to fetch some of Adelaida's things. They did not return right away. The family speculated that Jun forced Adelaida to stay with him in Pampanga. Maybe he was holding her hostage.

"While the family discussed this speculation, Toribia noticed that Luz was all ears. Toribia felt that Luz should not be privy to such a private discussion. So, Toribia ordered Luz to go upstairs. Luz did not obey and remained where she was. Toribia got angry. Suddenly, Luz burst into tears. This was when Luz revealed that Jun raped her.

"When Adelaida and Jun returned home, they found the household strangely quiet. They told Adelaida that they had learned that Jun had raped Theresa and Luz. Thereupon, Adelaida asked Jun to leave. He cried while he packed, and left that same night.

"After Theresa's disclosure, Toribia immediately informed her husband. He called a lawyer. On the lawyer's suggestion, they brought Theresa to the Capitol Medical Center. They told the doctor that their daughter was complaining of itchiness in the vagina.

"However, as the doctor was conducting the examination, they decided to reveal that their daughter had actually complained that she had been raped. After hearing this, the doctor refused to give a medical certificate and suggested that they should go to Camp Crame or to the NBI. Toribia hesitated to take the doctor's advise, because she was afraid that a medical examination would traumatize her daughter.

"On 1 July 1981 (should be 1982), Toribia took the two girls to the PC crime laboratory. The medico legal officer issued Luz' clinical history report (Exhibit "J"). He also made a clinical history report on Theresa (Exhibit "H").

"The chief of the PC-CIS sent a letter-request to the head of the crime laboratory for medical examination (Exhibit "G"). Lt. Col. Gregorio Blanco conducted an examination on Theresa and submitted his medico legal report (Exh. "I"). The report states that he found no external signs of recent application of any form of trauma. The smears were negative for spermatozoa. He found that physically, Therese was still a virgin.

"But he found the vulvar area to be congested and reddish. This condition may have been caused by an attempt to forcibly insert the penis. The penis may have penetrated the labia majora and labia menora, but not the hymen.

"Col. Blanco also examined Luz and filed his medico-legal report (Exhibit "K"). There were no external signs of recent application of any form of trauma. He found healed lacerations. The smears were negative for spermatozoa. He found that physically, Luz was no longer a virgin.

"The lacerations indicated that there was more than one act of sexual intercourse. Since the lacerations were healed, the intercourse could have taken place two months before the examination. If so, this explains why there are no contusions or trauma.

"On 2 July 1982, Toribia took the two girls to the PC-CIS. Investigator Vicente took the statements of Luz (Exhibit "E"); Theresa (Exhibit N"); and Toribia (Exhibit "O").

"Because of the trauma of the rapes, Theresa failed to pass Grade I and had to repeat it. Previously, she passed nursery, preparatory, and kindergarden without repeating any of them. Theresa is also bound to repeat Grade 2." (Rollo, pp. 28-35)

The appellant's defense consists of denials. He states that he did not rape either of the two complainants at any time. According to David, the Aguilar family trumped up the charges because the members wanted to keep him away from Adelaida. He attributes the physician's findings on the housemaid to her having an affair with a houseboy named Danilo. As to Theresa's testimony against him, the appellant attributes it to a hyperactive imagination caused by watching pornographic movies shown on television. He states that this may have excited Theresa's imagination to such an extent that the small girl fantasized copulation with him.

In lieu of an assignment of errors, the appellant presents three arguments:

I

PROSECUTION'S EVIDENCE IS FATALLY FLAWED AND HAS FAILED TO PROVE BEYOND REASONABLE GROUND THE GUILT OF ACCUSED.

II

CONDUCT OF COMPLAINANTS AFTER ALLEGED RAPE CASTS DOUBTS ON THE TRUTH OF THE ALLEGATIONS.

III

TESTIMONY AND EVIDENCE PRESENTED IS CLEARLY INSUFFICIENT TO CONVICT ACCUSED OF THE CHARGE OF THE RAPE. (Appellant's Brief, pp. 5, 18, 20)

The appellant contends that the testimony and evidence presented, upon which the trial court based its decision, is clearly insufficient to find him guilty of rape beyond reasonable doubt.

This Court finds, based on the records, that the elements of rape were present. Article 335 of the Revised Penal Code defines the crime of rape and provides for its penalty. The elements of rape pertinent to the case of Luz Delgado are: 1) that the offender had carnal knowledge of a woman, and 2) that such act is accomplished by using force or intimidation (*People v. Sunpongco*, 163 SCRA 222, 230) and those pertinent to the case of Theresa Aguilar are: 1) that the offender had carnal knowledge of a woman, and 2) that such act is committed when the woman is under twelve years of age.

The appellant also alleges that there was no showing that force and intimidation were present as to the four rapes committed against Luz Delgado.

This is not well-founded.

In Luz Delgado's testimony, she stated that she was threatened with a knife by the accused and there were threats to kill her if she would attempt to shout and put up a resistance.

We agree with the lower court in its ruling that Luz Delgado's testimony had passed the test of credibility. It ruled:

This trial court was convinced by the sincere demeanor of the private complainants. At the time she testified, Luz was 17 and a factory worker. Although she is a graduate of the Ramon Magsaysay High School, she did not appear to be particularly intelligent. She cried intermittently while struggling to testify."

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"Both complainants hesitated for long stretches in answering questions, particularly those concerning the actual violation; and they would weep bitterly. Crying instead of answering, when asked by the authorities, is not a denial of the rape. She must have been ashamed that she has been the victim of such a heinous offense. All that she could do was cry when she was pointedly asked questions. *People v. Prado* 108 Phil. 716. When the rape victim cries while testifying, this is evidence of credibility. *People v. Syquioco*, 118 SCRA 413." (Rollo, p. 38)

Also, in the case of *People v. Esquillo*, (G. R. No. 71311, March 31, 1989) we ruled:

"This Court has consistently held that the testimony of a rape victim as to who abused her is credible where she has no motive to testify against the accused."

Luz Delgado has no motive in this case. This Court finds it quite improbable that a naive inexperienced 16 year

old domestic helper would fabricate matters and thereby undergo the travails of a public trial exposing herself to humiliation and embarrassment by unraveling nasty matters against her virginity by lodging against the appellant so grave and serious a charge, if not true. (People v. Nunag, etc., GR No. 54445, May 12, 1989)

The inconsistency of Luz' testimony as to the dates of the rapes is understandable. A rape victim is not expected to keep an accurate account of the traumatic and horrifying experience she went through. We agree with the trial court that these discrepancies are insignificant. It was held in People v. Pacnis (G. R. No. 68992, September 26, 1988):

"This court has time and again held that inconsistencies and contradictions referring to minor details do not destroy the credibility of the witness."

The approximate dates given by the victim do not indicate that she was fabricating a story. An examination of her testimony indicates that the trial court did not err in believing her.

Luz Delgado's failure to immediately report the sexual abuse is justified. Based on her testimony, it can be concluded that fear for her life was the cause of the delay: She had every reason to be afraid and believed that the accused would carry out his threat as she and the children were left most of the time alone with the accused. (See People v. Galang, G. R. No. 70713, June 29, 1989)

Failure to report an incident immediately does not cast doubt on the credibility of the charge when delay is attributable to threats of death given by the accused to the victim.

The appellant alleges that there was no carnal knowledge as regards the rape of Theresa Aguilar.

Theresa Aguilar's testimony positively identified accused as her molester. The appellant's allegation that Theresa Aguilar's testimony was coached is without merit. The young victim's failure to give a detailed account of how she was abused, her denial that she conferred with a lawyer and her admission that she did not shout nor cry are hardly consequential as to negate the commission of the statutory crime of rape. The testimony of Theresa shows the naivete and sincerity of childhood. That she did not cry is explained by the fact that the appellant was not able to penetrate the hymen of the small girl.

Moreover, the medical certificate states that the vulvar area is congested and reddish and could have been caused by an attempt to forcibly insert the penis. The appellant alleges that these were self-inflicted as Theresa Aguilar was exposed to pornographic movies and TV shows. This Court agrees with the trial court when it ruled:

Existing laws effectively prohibit exhibition of pornography on television. The accused did not specify what television program showed the pornography, or what betamax tape did so. Even assuming arguendo that the child was so exposed, it hardly seems psychologically plausible that a 6-year old girl will masturbate, in the absence of other stimulation." (Rollo, p. 39)

The appellant believes that as the doctor was informed beforehand about the rapes committed, he was biased in preparing the medical certificate.

The medical certificate contained facts based on medical findings. The findings that there were lacerations and reddish and congested areas in the vulvar area in Luz Delgado and Theresa Aguilar respectively were based on the physical examination of the two. No amount of bias could have changed those facts.

The contention of the appellant that the charges against him were trumped up as the family of Adelaida did not like him is likewise, without merit.

It is inconceivable that a mother of a six-year old child would fabricate a rape charge, subject her daughter to

physical examination and the embarrassment of a public trial. A mother would not sacrifice her daughter's honor to give vent to a grudge knowing fully well that such an experience would certainly damage her daughter's psyche and tar her for life. (See *People v. Pelias Jones*, 137 SCRA 166, 178 [1985]) She would have found other ways of going after the appellant, if the latter's arguments were true.

Furthermore, the family of Adelaida had learned to accept the accused. This can be gleaned from the fact that the sister of Adelaida invited both of them to live with the family to take care of the children. This does not show mere acceptance but trust as well.

The appellant questions the absence of knowledge or earlier discovery of the rapes. He describes the lay-out-of the compact rooms and the partitions of the place wherein the rapes allegedly occurred. The appellant contends that it is impossible for other persons in the house not to have known of any attempt of rape.

The absence of witnesses in rape cases is not unusual as the offended party, more often than not, is the only one available to prove the commission of the crime of rape. Rape is usually done with the least possibility of being seen by the public. (*People v. Masongsong*, G. R. No. 63609, June 6, 1989.)

After going over the records and considering all the appellant's arguments, we reiterate the rule so firmly settled that the findings of fact of the trial court which had the inestimable advantage of listening to and watching the witnesses as they appeared before the court, are entitled to the greatest respect and will not be overturned by an appellate court save upon the clearest evidence. (*People V. Villaflores*, G. R. No. 66039, June 8, 1989)

The contention of the accused that the consolidation of the five (5) separate criminal cases for rape had placed him in an unenviable and veritably inequitable position as each case exists separate from another because they involve entirely different circumstances and two different sets of complainants, is untenable.

Rule 119, Sec. 14 of the Rules on Criminal Procedure provides:

"SEC 14. Consolidation of trials of related offenses. - Charges for offenses founded on the same facts, or forming part of a series of offenses of similar character may be tried jointly at the court's discretion."

This rule was applied in *Palanca v. Querubin*, November 29, 1969, 36 SCRA 738, 745 where this Court ruled:

"x x x where the offenses charged are similar, related, or connected, or are of the same or similar character or class, or involve or arose out of the same or related or connected acts, occurrences, transactions, series of events, or chain of circumstances, or are based on acts or transactions constituting parts of a common scheme or plan, or are of the same pattern and committed in the same manner, or where there is a common element of substantial importance in their commission, or where the same, or much the same, evidence will be competent and admissible or required in their prosecution, and if not joined for trial the repetition or reproduction of substantially the same testimony will be required on each trial." (23 C.J.S. pp. 680-681, citing cases.)

No substantial right was affected as the accused was afforded every opportunity to cross-examine and to secure the attendance of his witnesses and produce evidence in his behalf.

As the rapes were committed in substantially the same manner over the same period of time, we believe that the trial court acted in accordance with law and jurisprudence and in the interest of economy and speed in the consolidation of these cases.

WHEREFORE, the appealed judgment finding the accused guilty beyond reasonable doubt is hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Bidin, and Cortes, JJ., concur.

Feliciano, J., on official leave.

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