

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR S. CARIÑO, SR., ACCUSED-APPELLANT.

G.R. Nos. 74297 & 74351. November 11, 1988

Ponente: PARAS, J.

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PARAS, J.:

Appellant Cesar S. Cariño was charged with rape in two separate informations filed by the Assistant Provincial Fiscal of Rizal, to wit:

Criminal Case No. 1481-A

"That on or about and sometime during the month of April, 1979, in the municipality of Taytay, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Jocelyn A. Cariño against her will and consent committed with the aggravating circumstance of relationship - i.e. accused is the father of the said Jocelyn A. Cariño." (p. 7, Rollo of G.R. No. 74351)

Criminal Case No. 1482-A

"That on or about and sometime during the first week of January 1984, in the municipality of Taytay, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Josephine A. Cariño against her will and consent, committed with the aggravating circumstance of relationship - i.e., the herein accused is the father of the said Josephine A. Cariño." (p. 8, Rollo of G.R. No. 74297)

Accused Cariño pleaded not guilty to both charges on arraignment. Thereafter, a joint trial was had on these two cases. On February 10, 1986, the court a quo rendered the decisions in both cases finding appellant guilty of the crime of rape. The decretal portion of the decision in Criminal Case No. 1481-A reads:

"WHEREFORE, PREMISES CONSIDERED, the Court finds accused Cesar S. Cariño, Sr., guilty beyond reasonable doubt of the crime of RAPE and hereby sentences him to reclusion perpetua and to indemnify the victim Jocelyn A. Cariño in the sum of P30,000.00 with costs." (p. 16, Rollo of G.R. No. 74351)

The decretal portion of the decision in Criminal Case No. 1482-A reads:

"WHEREFORE, the Court finds accused Cesar Cariño, Sr., guilty beyond reasonable doubt of the crime of RAPE and hereby sentences him to suffer the penalty of reclusion perpetua, to indemnify the offended party the sum of P30,000.00 and to pay the costs." (p. 24, Rollo of G.R. No. 74297)

In Criminal Case No. 1481-A, the facts are as follows: In the evening of her graduation from elementary school in April, 1979, private complainant Jocelyn A. Cariño, then 14 years of age, was resting in the sala of her parents' house. At around 10:00 o'clock, she heard someone knocking loudly at the door. It turned out to be her father, accused herein, returning from his duty as a member of the Cainta Police Force.

Appellant ordered her to brew coffee for him. She proceeded to the kitchen where appellant followed her. He suddenly turned off the kitchen's lights and thereafter pulled Jocelyn towards him, embraced her and touched her private parts. Jocelyn tried to free herself but the accused pulled out his service firearm and poked it at her right breast, telling her not to scream or he would shoot her. As she trembled in fear, appellant lost no time in removing his pants. She saw an opportunity to escape but her attempt was foiled by the appellant who gripped her hand tightly. Accused then pulled her down to the floor, got on top of her, forcibly removed her underwear with one hand as he held his gun with the other. Jocelyn was deflowered despite the resistance she put up.

Jocelyn, fearing for her life, and those of her mother, brothers and sisters if she reported the incident to anyone kept quiet until one day when she saw her father coming out from the bathroom followed by her twin sister Josephine (private complainant in Criminal Case No. 1482-A for rape, also against appellant). Thinking that her father raped her twin sister too, Jocelyn gathered enough courage to inform her older sister Grecilda and later her older brothers and sisters about both incidents. On their advice, Jocelyn reported the matter to the authorities. (pp. 8-23, tsn, March 22, 1985)

In Criminal Case No. 1842-A, the facts are as follows: At around 2:00 o'clock in the afternoon of the first week of January, 1984, Josephine Cariño was at home together with her mother and a young nephew. Her father, the appellant, arrived and instructed her mother to go to the market. As soon as her mother had left, appellant pushed Josephine towards the bedroom. Once inside, appellant wrestled with her and pinned her on the bed. He then kissed her and touched her private parts. As she tried to free herself, her father slapped her violently and threatened to kill her if she shouted or made an outcry. Moments later, appellant removed his pants, got on top of her and removed her shorts and underwear. Appellant tried to insert his penis into her vagina but failed due to her resistance. Appellant again slapped her and hit her on the arms, abdomen and face with such force as to overcome her resistance, thus making possible the perpetration of the criminal act.

There were four other times when Josephine was raped by appellant. She dared not report these incidents to her mother or the authorities for fear that appellant would make good his consistent threat of death if ever she revealed them to anyone. (pp. 2-3, Decision of Criminal Case No. 1482-A, February 10, 1986)

Accused Cariño appealed said decisions before this Court assigning the following as errors committed by the trial court, to wit:

"I

THE COURT A QUO ERRED IN GIVING WEIGHT AND CREDENCE TO THE EVIDENCE OF THE PROSECUTION AND IN DISREGARDING THE EVIDENCE FOR THE DEFENSE.

"II

THE COURT A QUO ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE." (p. 42, Brief for the Appellant, Rollo of G.R. No. 74351)

In support of both assigned errors, appellant contends:

First: "If indeed it was true that the complainants were raped, their first natural reaction should have been to report the matter to the proper authorities and should have subjected themselves to an immediate physical examination. In the instant cases, it took private complainant Jocelyn about five years before she reported the matter to the police authorities and with respect to Josephine, about seven months to do the same. In one case, the Supreme Court held that 'the failure to file the complaint immediately after the rape was allegedly committed may shed doubts on the validity of the charges' (People vs. Castro, SCRA 473)." (pp. 42-43, Brief for the Appellant, Rollo of G.R. No. 74351)

Second: "Her (Jocelyn) testimony regarding her alleged resistance was given merely in general terms and the same is insufficient to sustain a conviction. x x x Merely trying to resist by offended party to the alleged sexual assaults could not be made a basis for conviction as actual resistance is necessary (see *People vs. Lacuna*, 87 SCRA 364)." (p. 43, Brief for the Appellant, Rollo of G.R. No. 74351)

Third: "With respect to private complainant Josephine A. Cariño, she alleged that accused had sexual intercourse with her on several occasions. In view of these circumstances, he maintains that there was no rape committed on her. The Supreme Court has held on this point, thus: 'there is no rape where although the facts show that carnal acts did take place, the same happened only under circumstances of mutual consent and, considering, their having been repeated on several occasions, in all probability, for mutual gratification. Whatever moral disapprobation may be visited on the mode of conduct of the accused cannot justify a conviction under such an indictment' (*People vs. Alvarez*, 55 SCRA 81)." (pp. 43-44, Brief for the Appellant, Rollo of G.R. No. 74351)

Fourth: "Accused-appellant claims that he did not sexually assault his daughter Jocelyn in April, 1979. There was no reason or motive for him to do so as he truly loves Jocelyn as his daughter. Furthermore, he claims that he has had enough of women, as in fact he had an illicit relationship with two women, namely, Milagros Nieva and Fely de la Cruz. Thus he is "nagsawa" with the opposite sex and his having sexual contact with his own daughter is nil."

Anent the first contention of appellant, in *People vs. Castro*, (58 SCRA 473) rape was allegedly committed by a brother-in-law in a small room while his wife was sleeping just an arms length away. In acquitting the accused, the Court stressed the complainant's failure to make an outcry or resist the accused's advances despite the fact that there was no danger to her life as her sister was just beside her.

In the case at bar, the rapes were perpetrated while the private complainants were practically alone and their father at each instance using force or a gun to make them submit. (pp. 82-83, Brief for the Appellee, Rollo of G.R. No. 74351)

With regard to the second contention, when a woman testifies that she has been raped, she says all that is needed to signify that the crime has been committed. This is so against any man committing the crime. It is more so when the accusing words are against a close relative (*People vs. Soterol y Engcong*, G.R. No. 53498, December 16, 1985).

In the case of *Lacuna*, (87 SCRA 364) the Court acquitted the accused charged with raping a married woman for the prosecution failed to show that force or intimidation had been employed on the complainant or that the complainant resisted. Considering the victims' ages and the form of force or intimidation used by appellant upon them, we can readily see the differences between the two cases. While no firearm was used in the *Lacuna* case, appellant used his service revolver on his daughter Jocelyn and violence and intimidation on Josephine to force them into submission. In *Lacuna*, the victim was an adult with discretion while Jocelyn was practically still a child and Josephine was a teen-ager when raped. As their father, appellant had 'moral' ascendancy over them. (pp. 83-84, Brief for the Appellee, Rollo of G.R. No. 74351) Moreover, we held in the case of *People vs. Erardo*, 127 SCRA 250, that the absence of determined resistance was not necessary considering the overpowering moral influence of the father over the daughters.

Considering the third contention, the surrounding facts of the case cited, i.e., *People vs. Alvarez*, are different. The rape was allegedly perpetrated in a room where the accused, his wife, his infant son and the complainant, his sister-in-law, had retired for the night. No weapon was used to intimidate complainant and the latter did not report the alleged assault to her parents. In the cases at bar, force and/or a weapon was used at each instance.

The Solicitor General correctly applied the case of *People vs. Secules*, 132 SCRA 653. In his brief he said:

"x x x the Court held that the complainant's delay of seven months, when she was already pregnant, in reporting the rape was not fatal as it did not imply her consent to sexual intercourse. The Court recognized that a stepdaughter could not be expected to denounce her stepfather immediately after the incident for she naturally held that respect, deference and fear felt by a child for a father. In the case at bar, private complainants' nagging fear that appellant may make good his threat to liquidate them and all the members of their family if they dared report the rape to their closest relatives and/or the authorities more than excuses the delay (p. 6, tsn, February 10, 1986)." (p. 85, Brief for the Appellee, Rollo of G.R. No. 74351)

The fourth contention of the appellant that because he has allegedly "nagsawa" with the opposite sex, having at the time of the offense illicit relationships with two women shows on the contrary probability of the commission of the offenses. The appellant has such a strong craving for sex that it was likely that he likewise coveted his own daughters.

When Jocelyn and Josephine decided to file rape charges against their father, they must have been true. Why would they risk ruining their future and expose themselves to public scrutiny and ridicule if the charges were not true?

Lastly, in many rape cases, the only two parties who can testify about what took place are the complainant and the accused. The testimony of each, being most likely diametrically opposite, has to be most rigidly scrutinized. The conviction or acquittal depends almost entirely on complainant's credibility. Her un-corroborated testimony, if it is credible and it satisfies the court beyond reasonable doubt, would suffice to justify conviction. (*People vs. Ibal y Yakap*, G.R. 66010-12, July 31, 1986)

WHEREFORE, premises considered, the assailed decisions of the lower court are hereby **AFFIRMED**, finding the accused Cesar S. Cariño, Sr., guilty beyond reasonable doubt of the crime of RAPE.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

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