

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARTIN BRUCA, DEFENDANT-APPELLANT.

G.R. Nos. 76019-20. November 06, 1989

Ponente: PARAS, J.

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PARAS, J.:

On August 8, 1980, two separate complaints were filed by Nimpha Bruca and Monina Bruca before the Regional Trial Court of Iriga City, Branch 35, charging their father, Martin Bruca, with Rape.

In Criminal Case No. IR-1167, Nimpha Bruca accused Martin Bruca of Rape, committed as follows:

"That on or about the 13th day of April, 1980 at about 11:00 o'clock in the morning at Barangay Caranday, Municipality of Baao, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd designs and thru force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge, with (sic) the undersigned complainant, the accused own daughter and against her will, to her damage and prejudice in the total amount of P12,000.00 Pesos, Philippine Currency.

"ACTS CONTRARY TO LAW." (pp. 21-22, Rollo)

In Criminal Case No. IR-1168, Monina Bruca accused Martin Bruca also of Rape, committed in this wise:

"That on or about the 13th day of April, 1980 at about 1:00 o'clock in the afternoon, at Barangay Caranday, Municipality of Baao, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused, with lewd designs and thru force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge, with (sic) the undersigned complainant, the accused own daughter and against her will, to her damage and prejudice in the total amount of P12,000.00 Pesos, Philippine Currency.

"ACTS CONTRARY TO LAW." (pp. 22-23, Rollo)

A plea of "not guilty" was entered by Martin Bruca to both charges and a joint trial was held considering that the accused in both cases is the same person, that the two charges are of the same nature, and that the evidence to be presented similar.

On May 30, 1986, the lower court rendered a consolidated Decision convicting Martin Bruca in both cases, the dispositive portion reading:

"WHEREFORE, PREMISES CONSIDERED, the court finds the accused guilty beyond reasonable doubt of the crime of Rape in both cases defined and penalized under Art. 335 of the Revised Penal Code with the aggravating circumstance of recidivism he having been earlier found guilty of attempted rape in Crim. Case No. IR-8331 and sentenced to 4 months and 10 days to 4 years and 2 months and is therefore sentenced to suffer imprisonment for reclusion perpetua or 30 years in Crim. Case No. IR-1167 and to serve another term of reclusion perpetua or 30 years in Crim. Case IR-1168. No pronouncement as to costs, (sic)

"SO ORDERED." (p. 33, Rollo)

Appellant's conviction was based primarily on the testimonies of complainants Nimpha Bruca and Monina Bruca although two (2) other witnesses were presented by the prosecution namely Leonila Pedro, complainants' maternal grandmother and Dra. Consuelo Margate, Rural Health Officer of Iriga City.

The complainants' version of the case has been synthesized in the People's Brief as follows:

"On April 13, 1980, the Bruca family (the father Martin Bruca and children Nimpha, Monina, Normita, Jenny, Martin, Jr., Maryjane and Ferdinand) arrived at their house in Caranday, Baao, Camarines Sur, after attending the ninth-day prayer (novena) for the death of their mother Lucia Pedro (who died on March 24, 1980 by reason of child delivery) held in La Medalla, Baao, Camarines Sur (tsn, June 27, 1983, pp. 3,6, 7, 10; October 6, 1983, p. 3; January 6, 1986, p. 2). The Brucas left La Medalla, where they spent the previous evening, for Baao at about 8:00 o'clock in the morning, travelling by tricycle up to San Vicente, walking from thereon, and arriving at Caranday at around 9:00 in the morning (tsn, June 27, 1983, p. 11).

"Once home, Monina, then thirteen years old (tsn, October 6, 1983, p. 15), together with her brothers and sisters were asked by their father to fetch water half a kilometer away (tsn, June 27, 1983, pp. 6, 7). Martin Bruca and his two other daughters, Nimpha aged fourteen, and Maryjane aged three, were left at home (Ibid., p. 8). Nimpha slept on a house bench, tired from the journey and the lack of sleep the night before (Ibid., pp. 10, 11). Maryjane, on the other hand, was playing (ibid., p. 13).

"While Nimpha was sleeping, Martin Bruca carried her to the room. Nimpha awoke and struggled to get down. She was unable to do so as her father held her tightly (tsn, June 27, 1983, pp. 8, 9, 10, 13, 14). Once in the room, Martin Bruca pulled down her daughter's panty. Nimpha resisted by attempting to stand up but was overpowered by her father who pulled her down (tsn, June 27, 1983, pp. 9, 16). Her panty was torn in the process (Ibid., p. 16). Martin Bruca, while kneeling down and facing Nimpha, then unzipped his short pants, took hold of his penis and inserted it in to her vagina (Ibid., pp. 9, 17).

This, after forcibly spreading her legs which Nimpha was trying, unsuccessfully, to keep together (Ibid., p. 17). Thereafter, Martin Bruca inserted his penis into her vagina and commenced to make 'up and down' movements. His daughter, already crying, placed her hands on her stomach in an attempt to push her father away — again unsuccessfully. (Ibid., pp. 9, 12). While making coupling movements, Martin Bruca held Nimpha's left and right shoulders, thus pinning her down. (Ibid., pp. 12, 17) When he was done, Bruca warned his daughter not to reveal the incident to anyone lest she be punished (Ibid., pp. 9, 18).

"At one o'clock in the afternoon of the same day, Nimpha Bruca was washing clothes at a distant place accompanied by her sisters Normita and Jenny (tsn, October 6, 1983, 11; June 27, 1983, p. 18). Marian (or Marijane?) and the one year old (tsn, October 6, 1983, p. 11) Ferdinand were playing in the yard. For her part, Monina was sitting inside the house even as her father was himself inside the house doing nothing (tsn, October 6, 1983, pp. 9, 12). It was then that Martin Bruca held Monina by the right hand, telling her thereby that they should go to the room. Monina replied that she did not want to (Ibid., p. 13). In any event, Martin Bruca forced his daughter to the room. Once there, Martin, over the resistance of Monina, removed her underwear, held her by the shoulder, pushed her down, forcibly spread her legs apart and inserted his penis into her vagina. (Ibid., pp. 14, 16, 17). All these even as Monina tried vainly to roll over and assume the prone position to avert the sexual union. (Ibid., p. 18). Monina felt pain as her father completed the sexual assault, making push and pull motions for about two minutes. (Ibid, pp. 19, 20, 21). Thereafter, Martin Bruca helped his weakened and crying daughter up, warning her at the same time not to divulge the incident and threatening that she would be whipped should she do so. (Ibid., pp.21,22,23).

"After the events of that day, Nimpha and Monina ran away from home, proceeding to the house of their maternal grandmother, Leonila Pedro, at San Pedro, Iriga City, where they reported the sexual abuse they suffered in the hands of their father (tsn, June 27, 1983; November 28, 1984, pp. 3-4).

"On April 25, 1980, Nimpha and Monina Bruca were accompanied by their grandmother to Dra. Consuelo Margate, Rural Health Officer of Iriga City, who examined the two sisters, (tsn, November 28, 1984, p. 4; September 17, 1981, p. 2). Dra. Margate found, on the person of Nimpha Bruca, completely healed lacerations of the hymen at 3, 4, 5 and 11 o'clock positions (tsn, September 17, 1981, p. 4). On the other hand, Dra. Margate found, as gynecological injuries on the person of Monina Bruca, completely healed lacerations of the hymen 3, 4, 5, 6 and 11 o'clock positions (Ibid., p. 6). (pp. 80-84, Rollo)

Appellant now seeks to set aside the judgment upon the following assignments of error:

I

THE TRIAL COURT ERRED IN CONSIDERING THE TESTIMONY OF NIMPHA BRUCA AND MONINA BRUCA, COMPLAINANTS IN CRIMINAL CASES NOS. IR-1167 AND 1168, RESPECTIVELY, AS TRUSTWORTHY IN GIVING IT FULL CREDENCE.

II

THE TRIAL COURT ERRED IN FINDING THE TESTIMONY OF DRA. CONSUELO MARGATE THAT THE GYNEOLOGICAL INJURIES OF COMPLAINANTS CAUSED BY SEXUAL INTERCOURSE, RIDING ON A CARABAO OR BICYCLE OR SAT ON SHARP OBJECT HITTING HER VAGINA FAVOR THE PROSECUTION.

III

THE TRIAL COURT ERRED IN FINDING MARTIN BRUCA GUILTY OF RAPE ON THE GROUND THAT HIS DEFENSE OF ALIBI IS WEAK. (p. 13, Brief for the Accused, p. 68, Rollo)

We find no reasonable ground to disturb the lower court's judgment of conviction.

In his first assignment of error appellant contends that the lower court erred in giving full credence to the testimonies of the complainants. Specifically, he avers that they are not credible because their version of the rape incidents is wanting in proof of struggle and resistance on their part.

This contention is without merit.

Nimpha Bruca testified to the following acts of force employed by Martin Bruca and her resistance offered in response thereto:

- Martin Bruca's act of tightly holding and carrying her from the bench into the room (tsn, June 27, 1983, pp. 9, 10, 14).

"I tried to free myself but he would not release me" (tsn, June 27, 1983, p. 9); "I was trying to release his hands from me but I could not do so" (Id.); "I tried to get down but my father was holding me tightly" (Ibid., p. 10).

- Martin Bruca's act of removing Nimpha's underwear once inside the room (tsn, June 27, 1983, p. 16):

"I tried to stand up but was unable to do so because he pulled me down." (Id). Her panty was torn in the process (Id.).

- Martin Bruca's act of spreading her legs apart (tsn, June 27, 1983, p. 17):

Nimpha positioned her legs together but "he took hold of my two legs and spread it." (Id.)

- Martin Bruca's act of inserting his penis into her vagina while his two hands were on her left and right shoulder, pinning her down (tsn, June 27, 1983, pp. 11, 12, 17):

"I was struggling but it was futile because he was on top of me" (Id., p. 12); "I was pulling him aside (Id.) but was unable to do so because he pinned me down" (Id.); "I put my hands on my stomach and I tried to sop (sic) him or pushed (sic) him away." (Ibid., p. 17)

For her part, Monina Bruca testified to the following forcible acts of her father and her corresponding reactions:

- Martin Bruca's act of holding her by her right arm and forcing her into the room (tsn, October 6, 1983, p. 13, June 5, 1984, pp. 5,6):

"He held my right arm and then he said that we should go to the room although I refused" (tsn, October 6, 1983, p. 13); "I said I do not want" (Id.). "Although I refused he pulled me inside the room" (Ibid., p. 14); "I held the post with my left hand so I can free myself from his hold." (tsn, June 5, 1984, p. 13)

- Martin Bruca's act of removing her panty and forcing her to lie down (tsn, October 6, 1983, p. 14; June 5, 1984, pp. 7, 8, 15):

"I was crying and tried to get away from him" (tsn, October 6, 1983, p. 14); "I tried to free myself (tsn, June 5, 1984, p. 8); "He made me lie down and pressed me so that I could not stand."

- Martin Bruca's act of posting himself on top of Monina (tsn, October 6, 1983, pp. 14, 16):

"He place (sic) himself on top of me and I also kept on struggling" (Ibid., p. 14); because "I want to get free (sic) from him" (Ibid., p. 15); but was unable to do so because "he was holding me tight" (Id.).

- Martin Bruca's act of spreading her legs by holding her thighs (tsn, October 6, 1983, p. 17):

"I did not spread my legs and then I continue (sic) to struggle, then he spread my legs" (Id.); "I held my thighs together but he opened them and spread them" (tsn, June 5, 1984, p. 15).

- Martin Bruca's act of inserting his penis into her vagina (tsn, October 6, 1983, p. 17; June 5, 1984, pp. 8-9):

"I tried to roll over and making me (sic) into a prone position" (tsn, October 6, 1983, p. 18); but failed "because he also kept on maintaining my position" (Id.); with her left hand that was free, she tried to get up and ward-off her father but was subdued (Ibid., pp. 18, 19). (pp. 85-88, Rollo)

In cases of rape, the manner, form and tenacity of resistance of the victim thereon are dependent on a number of factors, among which are the age and size of the victim as well as the aggressor himself; the degree of actual force and intimidation employed and, of utmost importance, the relationship between the rapist and his prey.

In the cases at bar, Monina and Nimpha Bruca were of the tender ages of thirteen and fourteen years, respectively at the time of the incident. On the other hand, their father was then thirty-six years old. Moreover, he worked as a laborer cutting trees for a livelihood in 1980. Sizewise and strengthwise one can readily see the difference between Mr. Bruca and his two daughters.

We ruled in *People v. Javellano*, (57 SCRA 320) that:

"It is not necessary that the force employed against the complaining woman be so great or of such a character as could not be resisted. It is enough that the force used is sufficient to consummate the culprit's purpose of copulating with the offended woman. The force or violence necessary is naturally a relative term, depending on the age, size and strength of the parties and their relation to each other."

Significantly, it should be stressed that the acts of rape in the case at bar involve a father and his two daughters.

In *People v. Erardo*, (127 SCRA 250) likewise involving a rape case of a girl by her own father, this Court stated:

"And assuming that force or intimidation had not been actually employed, the crime of rape was still committed. As aptly observed by the trial court, the absence of violence and/or offer of resistance would not be necessary because it is the overpowering and overbearing moral influence of the father over the daughter that takes the place of violence and offer of resistance required in rape cases committed by an accused having no blood relationship with the victim."

Appellant's other arguments focus on the issue of credibility. In this regard, We are guided by the settled rule that the trial court has unequalled competence to consider and determine the credibility of witnesses, in view of its unique opportunity to observe the demeanor of the witnesses on the stand, an opportunity not afforded to the appellate court (*People v. Montalbo*, 130 SCRA 634).

In convicting the appellant, the court a quo said:

"The evidence adduced by the prosecution in both cases is so shocking and almost unbelievable. Complainant Nimpha Bruca, then 14 years old, and Monina Bruca then 13 years old, were raped by their own father, on the same date, April 13, 1980, and only months away from the death of their mother who died on March 24, 1980, and even had their end of prayers (katapusan) on April 11, 1980 at La Medalla; Baao, Camarines Sur.

"Their respective medical certificates issued by Dra. Consuelo M. Margate (Exh. A-1167 and Exh. A-1168) for Nimpha and Monina Bruca, at the time of examination made on April 25, 1980 both show healed lacerations in different positions of the hymen of both complainants.

"Complainant Nimpha Bruca related her story of that unforgettable event that happened to her and her father. She recalled how her father on that fateful April 13, 1980 at about 9:00 o'clock in the morning while her other sisters and brothers were in the creek, and her sister Marijane then about only 3 years old, and while she was sleeping on the bench, she was carried by her father to a waiting mat inside their room and despite her resistance, kicking, pushing, struggling, her father was able to consummate his carnal desires upon his own daughter. Nimpha related in details (sic) and her feelings (sic) as she underwent the brutal attack upon her person by her own father.

"So did, complainant Monina Bruca, younger sister of Nimpha who at the time was only 13 years old, hence, the finding of Dra. Margate of 'scanty pubic hairs.' Monina also related unabashedly how she in her early and tender years while alone inside the house she was taken hold of by her father, pulled to their room and despite her refusal, struggle, her father removed her panty, forced her to lie down and by means of force was able to consummate his dastardly act and thereafter warning her that should she tell anybody of what happened she will be whipped.

"And what is more revealing is that both daughters claim that is not the first time that their father did this to them. As to Nimpha she claims that this is already the fourth (4[th]) time that her father did this to her, the first being by under the coconut plantation in 1976, or when she was only about 10 years old, and as to Monina she claims this is already the third time this was done to her by her father, the first having happened in 1977 when she was asked by her father to gather firewood and she was brought instead to the creek where she had her first sexual intercourse experience and from her own father, and it is for this reason that in the instant case on the same date April 13, 1980 the two of them decided to leave their home, their brothers and sisters and went to their grandmother to whom they reported the matter and had them examined by a physician on April 25." (Decision, pp. 9-10; pp. 29-30, Rollo)

Appellant's pretension that the filing of the case was motivated by his mother-in-law because of his refusal to give to her the custody of Nimpha and Monina and even his youngest child, is to say the least, very flimsy if not ridiculous. It is hard to believe that a maternal grandmother would sacrifice her two granddaughters who at that time were already without a mother, to tell a story of defloration, allow the examination of their private parts and

thereafter present them to be the subject of a public trial, if they were not motivated by an honest desire to have the culprit, complainants' own father, punished. In a long line of decisions, this Court had manifested its marked receptivity to lend credence to the testimonies of rape victims who are young and immature girls as in the instant case.

Finally, We are not impressed by the appellant's defense of alibi. It is a defense too easy to fabricate. Besides, his alibi does not preclude the possibility that he was present at the scene of the crime when it was committed.

The incident happened on April 13, 1980 at Barangay Caranday, Baao, Camarines Sur. Appellant claimed that on this supposed date they were still at La Medalla, Baao, Camarines Sur as they went down from the mountains for the end of the novena for his late wife on April 11, 1980 and on April 12 they had their youngest child baptized and on April 13, they had the utensils borrowed for the parties returned and it was only on April 14, 1980 that they returned to their house at Caranday, Baao, Camarines Sur. The evidence of the prosecution however shows that they left La Medalla, Baao at about 8:00 o'clock in the morning of April 13, they took a ride in part and walked in part and arrived at Caranday at about 9:00 o'clock in the morning of the same day. The rape of Nimpha was committed at 11:00 o'clock and that of Monina at 3:00 o'clock p.m. The place of the incident therefore is not of such distance as to preclude the accused from being in La Medalla and yet be at the scene of the crime at the time it was committed.

For all the overwhelming evidence stocked up against appellant, his pretension of innocence is simply unbelievable and futile.

We reiterate what we once said in *De La Cruz v. Paras*, 123 SCRA 569, 576 that "those who lust cannot last," and those who inflict their lust upon their own flesh and blood must be removed from society.

WHEREFORE, the appealed judgment is hereby AFFIRMED.

SO ORDERED.

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

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