

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. JOSE OCAMPO Y TIAMSON, DEFENDANT/APPELLANT.

G.R. Nos. 90247-49. February 13, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Jose Ocampo appeals from a decision of the trial court convicting him of two (2) crimes of statutory rape, sentencing him for each crime to the penalty of reclusion perpetua and awarding private complainant Luzviminda A. Bañez an indemnity of P25,000.00 as moral damages, but acquitting him of the crime of lascivious acts for insufficiency of evidence.[1]

Appellant was charged in two (2) complaints both dated 7 July 1988 and signed by the complainant of statutory rape. The first complaint reads:

"That on or about the 23rd day of December 1983, in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, and with lewd designs, did then and there willfully, unlawfully and feloniously have carnal knowledge of one Luzviminda A. Bañez, a girl under twelve (12) years of age." [2]

Except for the date of commission of the second offense, which was 23 January 1984, the second complaint was identically worded as the first.[3]

At arraignment, appellant entered a plea of not guilty to both charges.[4] The cases then proceeded to trial. The trial court found the following facts to have been established:

"x x x x x x x x

A perusal of the prosecution evidence, primarily anchored on complainant's testimony, shows that the victim, Luzviminda Bañez, was a young girl, then nine years old and a grade school pupil. Accused Jose Ocampo, on the other hand, was a widower who became complainant's step father when her mother, Gloria A. Bañez married him sometime in 1983 after the death of her father.

Accused bore three (3) children by the first marriage, so also with Gloria A. Bañez. After their union, they decided to reside altogether with their respective children at No. 5 Santan St., Jabson Site, Pasig, Metro Manila.

On December 28, 1983, at about 8:30 o'clock in the morning, while complainant was sleeping alone inside the room of their house at the aforesaid address, accused came near her and promised to give her dolls, clothing and necklace(s) when his plan to go to Saudi Arabia materializes. Once there, accused undressed complainant by pulling down her shorts and underwear and pulling up her sando. Accused likewise pulled down his pants and brief and pulled up his shirt. Then, accused lay on top of complainant, inserted his private part into her organ and made that push and pull movement. Complainant cried in pain and asked the accused why there was blood and the latter answered that it just came from her mother. She also saw 'white blood' in her private part. Thereafter, both of them put on their clothes, with accused warning the complainant not to tell anybody what

happened to her. For about a week, complainant experienced pain in urinating.

On January 23, 1984, at around 6:00 o'clock in the evening, complainant was again in the same room when (the) accused came in and undressed her. Accused also undressed himself, then placed himself on top of complainant and inserted his private part into her private part. Accused made a push and pull movement and again complainant later saw 'white blood' in her private organ.

x x x x x x x x

On 2 May 1988, while complainant was in their house, her mother and accused herein had a quarrel. Her mother took all of accused's documents in going to Saudi (sic) and left the house. Accused then charged complainant and her brother and sister as the ones who kept the travel documents. Before her mother left the house, complainant was whipped in front of the accused, telling her how she cursed much (sic) of her (the mother's) husband. She (complainant) became rebellious that she told her mother, 'yung mga gamit ng asawa mo, kulang pa sa ginawa niya sa akin.' When her mother asked her what she meant, she (complainant) frankly told her: 'Ginawaan niya ako ng masama.' Her mother cried and called up her auntie Lydia Eugenio in order to accompany her to the hospital for (a) medical check-up. She was subjected to medical examination there but due to lack of money she was not able to get the result.

In the meantime, complainant was instructed by her mother to live at the house of her (natural) father's friend for about a week. Thereafter, she transferred to the house of her auntie, Josefina Manlapig. On 11 May 1988, the latter accompanied her to a lawyer and then to the PC Crime Laboratory at Camp Crame, Quezon City where she underwent another medical examination.

Dr. Dario L. Gajardo, the attending medico-legal officer who examined the complainant, concluded in his Medico-Legal Report No. M-1050-88 (Exhibits 'A,' 'A-1') that the victim is in a non-virgin state physically. His findings upon examination of the victim's genitals reads as follows:

'There is absence of pubic hair. Labia Majora are full, convex and coaptated with the dark brown labia minora presenting in between. On separating the same is disclosed an elastic, fleshy-type hymen with shallow healed laceration at 4 and an indentation at 9 o'clock. External vaginal orifice offers moderate resistance to the introduction of the examining index finger and virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.'

x x x x x x x x"[5]

Appellant was apprehended at the Jabson Site residence on 23 November 1988 by policemen bearing a warrant of arrest issued by the trial court. He has been in detention ever since.[6]

Appellant gave a different and uncorroborated version of events, centered chiefly on the defense of alibi, before the trial court. He alleged that on the dates when he supposedly had carnal knowledge of Luzviminda, he was at the residence of his mother located at No. 116 Gonzales St., Caloocan City, caring for his three (3) children by his deceased first wife, and never left those premises during said dates.[7]

In this appeal, appellant assigns a single error allegedly committed by the trial court:

"The trial court erred in not taking into account certain circumstances which, if x x x properly considered, could have reinforced the conclusion that the judgment should be one of acquittal of the accused-appellant, not only in the case for acts of lasciviousness, but likewise for the crime of rape on two (2) counts."[8]

The ultimate issue posed in this appeal is whether the trial court erred in believing the testimony of the prosecution witnesses, namely the complainant, her paternal[9] aunt Josefina Manlapig and the examining physician (Dr. Dario L. Gajardo), tending to show that appellant had sexually embraced complainant when she

was only nine (9) years of age and in disbelieving the exculpatory declarations of appellant.

The Court accords great respect to the factual conclusions drawn by trial courts, particularly on the matter of credibility of witnesses, since the trial judge had the opportunity of observing the deportment and demeanor of witnesses while listening to them speak; enabling him to form at first hand a judgment as to whether witnesses are telling the truth or not.[10]

Appellant's present appeal has failed to show why the Court should depart from this general rule.

Appellant invokes in his favor the settled rule that the uncorroborated testimony of an alleged rape victim should not be received by a court with precipitate credulity but should be examined and weighed carefully and a conviction handed down only if the testimony is impeccable and rings true throughout. He points out the following claimed defects in complainant's testimony: 1) it is possible that complainant's outburst during the quarrel on 2 May 1988 was due to the resentment she felt over her previous scoldings by appellant as a stepfather, as well as to her desire (which was shared by her relatives like witness Josefina Manlapig) to drive a wedge between appellant and her mother in order to cause their separation; 2) it was implausible for appellant to have abused complainant because he and the latter's mother were married and had consequently come to live together as husband and wife at the Jabson Site residence, only on 15 December 1984; and 3) considering that complainant was almost fourteen (14) years of age at the time of her physical examination, it was possible that the loss of her physical virginity, as indicated in the medico-legal report of the PC Crime Laboratory,[11] was due to sexual intercourse with someone other than her stepfather.[12]

The contentions are unconvincing. The claimed ill-motives of the complainant and her relatives were not established by the testimony of impartial corroborating witnesses. That such a motive existed and drove Luzviminda to accuse appellant, her stepfather, falsely of rape appears to us as too speculative and unreal a supposition. Complainant's capacity falsely to fabricate a story of sexual abuse is belied by her innocence of such matters, a condition she had exhibited before the trial court when, already an adolescent, she naively referred to appellant's semen as "white blood." It is far more plausible to the Court that complainant's motive in denouncing appellant was to vindicate the wrong done her by appellant regardless of the consequences such a public disclosure may mean for her reputation.[13]

In support of his second contention, appellant introduced for the first time on appeal a marriage contract, claiming it was evidence he could not produce and offer at the trial because he was detained and which, if considered by the Court, would support his claim of a belated marriage with Luzviminda's mother.[14]

The difficulty with this contention is that appellant could have asked the trial court to require production of the marriage contract from the appropriate officer having the custody of the record by way of a subpoena duces tecum. Since the document was not offered as evidence before the trial court, it cannot now be considered by the Court in this appeal.[15]

Moreover, assuming the belated character of appellant's marriage to Luzviminda's mother, that marriage did not necessarily imply that appellant, as a suitor of complainant's mother, could have had no access to the girl prior to the marriage, it appearing that both mother and daughter were already residing together with appellant at Jabson Site prior to the legal union of appellant and Luzviminda's mother.[16]

We note that there was a lapse of four (4) years before the facts concerning the two (2) instances of sexual intercourse that appellant had inflicted upon complainant Luzviminda, emerged into the open. Appellant had carnal knowledge of Luzviminda in December of 1983 and January of 1984, while the informations were filed against appellant in July 1988, after a family quarrel had precipitated a whipping of Luzviminda by her mother

in front of accused. Luzviminda was nine (9) years old when appellant lay with her and took away her virginity. She was then living in the same house that her mother and accused step-father lived in and supported by her mother and possibly by her stepfather as well. That fact, coupled with the warning that appellant had taken the precaution to administer to Luzviminda, is adequate explanation, to the mind of the Court, for the long delay and the pronounced reluctance of Luzviminda to reveal to her mother and her family at large what her stepfather had done to her. The trial court found her testimony forthright and credible:

"After a careful study and scrutiny of the evidence presented by both the prosecution and the defense, the Court finds no sufficient justification to depart from the theory of the prosecution. Complainant's positive, direct and categorical assertion on how she was sexually abused by the accused herein on different occasions merits the Court's full faith and credence more so that it was corroborated by the findings of the medico-legal officer who examined the complainant. x x x.

In order to entice her into yielding to the lustful desire of the accused, complainant in no uncertain terms declared that accused promised to give her dolls, clothing necklace should his plan to go to Saudi Arabia push through. Truly, this made complainant happy (TSN, June 27, 1989, p. 13) as a girl of so tender an age would readily be influenced by such cajolery and importunings. The innocence of the complainant in matters about sex was solidly portrayed when she described the sticky fluid during ejaculation as mere 'white blood'." [17] (Underscoring supplied)

Appellant's contentions afford no basis for overturning this conclusion of the trial court.

The mere imputation of promiscuous conduct on the part of complainant will not serve to negate the truth of the statutory rape charges. Her declarations before the trial court contained the intimate details of her violation which remained uncontradicted on material points despite intensive cross-examination by defense counsel. [18] Against such positive testimony, appellant's uncorroborated and self-exculpatory contention that complainant may have had sexual intercourse with other males simply cannot prevail. [19]

Appellant also contends that the circumstance that complainant's mother, who would have naturally felt as if she had herself been violated in this case, did not testify against him on the circumstances regarding complainant's public disclosure of the alleged sexual abuses, created a presumption that the mother's testimony would have been adverse to the prosecution's cause if presented. [20]

Such presumption did not arise here because the testimony of complainant's mother was always available to appellant who could have called her as a hostile witness for the defense. [21] Moreover, the mother's testimony would have constituted cumulative evidence merely for the prosecution and could be dispensed with at the prosecutor's discretion. [22]

Finally, as before the trial court, appellant raises here the defense of alibi. [23] The trial court rejected that defense and we must do so too:

"The denials made and the alibis advanced by the accused cannot prevail over his positive identification by complainant. As has been consistently held, alibi is the weakest of all defenses; especially where it has not been shown that it was not physically impossible for the accused to have been present at the place where the crime was committed at the time it was perpetrated. Accused's alleged place in Caloocan City was just a few kilometers away from the house of complainant in Pasig and the same could be traversed in about an hour and therefore, there was no physical impossibility of the accused to have been at the crime scene during its commission." [24]

A further difficulty in sustaining this defense stems from appellant's assertion under direct examination [25] that he was at his mother's residence on 23 December 1983, even though the first rape was shown earlier by the

prosecution to have occurred five (5) days later. His failure to offer corroborating witnesses, like his mother and his three (3) minor children by his first marriage, who he claimed were also present at the Caloocan City residence on 23 January 1984, further impaired the value of his alibi.[26]

It appearing to the Court that the evidence has established to a moral certainty that appellant copulated with complainant on at least two (2) occasions when the latter was still below 12 years of age, we conclude that the trial court did not err in convicting appellant twice of the crime of statutory rape. Though there was a variance in the established date of commission of the first offense, that date was not so remote from the date alleged in the relevant complaint as to surprise and prejudice the appellant.[27] The precise date when complainant was sexually abused is not an essential element of the offense.[28] The gravamen of that offense is having sexual intercourse with a woman under twelve (12) years of age. Whether force, intimidation or cajolery was employed by the culprit, either to overcome the resistance of the victim, or to inveigle her into giving her consent to the sexual act, is quite immaterial so far as concerns the generating of criminal liability.[29]

It also appears to the Court that the commission of both offenses was attended by the alternative circumstance of relationship which is aggravating in crimes against chastity.[30] Appellant had exploited the trust which complainant must have reposed in him as a stepfather (complainant's ascendant by affinity) in order to facilitate the commission of the offenses.[31] However, since the penalty provided for statutory rape is single and indivisible (reclusion perpetua), this modifying circumstance would have no effect on the penalties imposable on appellant.[32]

WHEREFORE, the challenged Decision of the Regional Trial Court dated 1 September 1989 is hereby AFFIRMED with the sole modification that the indemnity awarded to the complainant as moral damages should be increased to P50,000.00 in each case, after taking into account the violation of trust and confidence arising from the relationship between offender and his nine (9) year old stepdaughter.[33] Costs against appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Rollo, p. 5; Decision, pp. 9-10.

[2] Folder of transcript of stenographic notes, p. 18.

[3] Record, p. 1.

[4] Id., pp. 18-19.

[5] Rollo, p. 5; Decision, pp. 2-4 and 6.

[6] Record, pp. 13-14; TSN, 12 July 1989, p. 4.

[7] TSN, 12 July 1989, pp. 2-3.

[8] Rollo, p. 29; Appellant's Brief, p. 6.

[9] TSN, 21 February 1989, p. 7.

[10] People v. Raptus, G.R. No. 92169-70, 19 June 1991, p. 10.

[11] Exhibit "A" for the prosecution. Record, p. 56.

[12] Rollo, p. 29; Appellant's Brief, pp. 6-9. TSN, 12 July 1989, pp. 4-5.

- [13] *People v. Yambao*, 103 SCRA 571, 577-578 (1991).
- [14] Rollo, p. 29; Appellant's Brief, pp. 6-7.
- [15] Rule 132, Section 34. See *People v. Rael, et. al.*, G.R. No. 64415, 10 December 1991, p. 17.
- [16] TSN, 27 June 1989, pp. 3-4.
- [17] Rollo, pp. 9-10; Decision, pp. 5-6.
- [18] TSN, 27 June, 1989, pp. 13-14.
- [19] *People v. Puedan*, 196 SCRA 388, 397 (1991).
- [20] Rollo, p. 29. Appellant's Brief, p. 8.
- [21] *U.S. v. Dinola*, 37 Phil. 797, 810 (1918).
- [22] See *People v. Gadiana*, 195 SCRA 211, 214 (1991).
- [23] Rollo, p. 29. Appellant's Brief, pp. 5-6.
- [24] Rollo, p. 5; Decision, pp. 7-8. Reiterated in *People v. Herico* 192 SCRA 655, 662 (1990) and in *People v. Santos* 183 SCRA 25, 33 (1990).
- [25] TSN, 12 July 1989, p. 2.
- [26] *People v. Graza*, 196 SCRA 512, 517-518 (1991).
- [27] *People v. Puedan*, 196 SCRA at 393.
- [28] *Id.*
- [29] *People v. Raptus*, G.R. Nos. 92169-70, 19 June 1991, pp. 9-10.
- [30] Article 15 (2), Revised Penal Code; *People v. Lucas* 181 SCRA 316, 327 (1990).
- [31] *People v. De Leon*, 50 Phil. 539, 545 (1927).
- [32] Articles 63(1) and 335(2) Revised Penal Code.
- [33] *People v. Puedan*, 196 SCRA at 398; *People v. Santos*, 183 SCRA at 33-34. See also *People v. Andaya*, 196 SCRA 660, 664-665 (1991).

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