

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELEUTERIO RAPTUS Y JERAY, ACCUSED-APPELLANT.

G.R. Nos. 92169-70. June 19, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant was charged before the Regional Trial Court of Caloocan City by private complainant Arlene Cabe, a minor eleven (11) years of age, in two separate complaints for the crime of rape. Accused allegedly had carnal knowledge of private complainant against her will on two separate occasions.[1]

The trial court, after joint trial, found the appellant guilty as charged and sentenced him in its consolidated decision of August 18, 1989, as follows:

"WHEREFORE, in view of the foregoing, this Court finds the accused ELEUTERIO RAPTUS y JERAY guilty beyond reasonable doubt of having committed rape as penalized under Article 335 of the Revised Penal Code, as amended, on the victim Arlene Cabe as charged on October 3, 1988 under Criminal Case No. C-31834. This Court also finds the accused ELEUTERIO RAPTUS y JERAY guilty beyond reasonable doubt of having committed rape on the same Arlene Cabe on November 4, 1988 under Criminal Case No. C-31835. This Court hereby sentences the said accused in Criminal Case No. C-31834 to suffer imprisonment of reclusion perpetua; to indemnify the victim, Arlene Cabe in the amount of P25,000.00; and to pay the costs. This Court likewise sentences said accused in Criminal Case No. C-31835 to suffer imprisonment of reclusion perpetua; to indemnify the victim, Arlene Cabe, in the amount of P25,000.00; and to pay the costs.

"The accused shall be credited with the period of time he has undergone preventive imprisonment in the service of his sentence(s) under Article 29 of the Revised Penal Code, as amended.

"SO ORDERED."[2]

As found by the trial court, at about 12:00 noon on October 3, 1988, Arlene was playing with two other young girls named Irene and Marilou in front of a house which was being constructed near her home. Appellant, who resides in a house about eight (8) meters away, called Arlene and requested her to buy P2.00 worth of Hope cigarettes for him from the store of one Aling Belen. Arlene bought the Hope cigarettes and then went to the house of appellant to deliver the cigarettes as instructed. After receiving the cigarettes, appellant suddenly closed the door of the house. There was nobody else inside the house. Appellant threatened Arlene and then brought her to his room. Once inside the room, he forcibly stripped Arlene naked. He also took off all his clothes and, thereafter, forcibly laid Arlene down on the floor and placed himself on top of her. Appellant placed his penis inside the private organ of Arlene. Arlene felt pain as the penis of appellant entered her vagina. Appellant touched Arlene's breasts while he was on top of the latter. His penis was inside Arlene's private part for about five (5) minutes. Arlene was unable to shout because of fear.

After this, appellant put on his clothes while Arlene also put on her clothes. Before leaving the house, appellant gave Arlene P20.00 which the latter accepted. She was threatened not to report the matter to her mother. Arlene

went home and, later, she spent the P20.00.

At about 10:00 o'clock on the morning of November 4, 1988, Arlene was playing with other children in front of her house. Appellant called her and requested her to buy Hope cigarettes worth P3.00. After buying the cigarettes, Arlene proceeded to an old abandoned house to give the cigarettes to appellant. This was the place where appellant had told Arlene to go in order to deliver the cigarettes to him. This vacant house was about sixty (60) meters away from the house of Arlene. What happened thereafter was a repetition of the first sordid incident.

Upon reaching the vacant house, Arlene gave the cigarettes to appellant who, after receiving the cigarettes, closed the door of the vacant house. He quickly undressed himself and also forcibly undressed Arlene. Appellant forcibly laid Arlene on the floor and then placed himself atop Arlene. He inserted his private organ inside the sexual organ of Arlene, at the same time touching her breasts. Arlene again felt pain as appellant inserted his penis inside her vagina. His penis remained inside the sexual organ of Arlene for about five (5) minutes while Arlene was lying down on the floor. He put on his clothes after this, while Arlene dressed up. Before leaving the vacant house, appellant gave Arlene P20.00. Before she went home, she was again threatened not to tell her mother or anybody else about the sexual encounter.[3]

At about 6:00 o'clock on the evening of December 6, 1988, Evelyn Labarlado, a 23-year old neighbor of Leticia Cabe, the mother of Arlene Cabe, went to the latter's house at Bagong Silang, Caloocan City. Evelyn asked Leticia if she had learned about the sexual molestations suffered by the latter's child, Arlene. Leticia confronted her daughter Arlene right then and there in the presence of Evelyn Labarlado. Arlene admitted that she was really sexually molested by appellant "Mang Terio," whose full name is Eleuterio Raptus.[4]

On December 7, 1988, Arlene Cabe was subjected to medical examination for alleged rape at the Philippine Constabulary Crime Laboratory at Camp Crame, Quezon City. Dr. Desiderio Moraleda, chief of the Medico-Legal Office, conducted the medico-legal examination, and submitted Medico-Legal Report No. M-2923-88, dated December 12, 1988, stating in part the following -

"FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female child subject. Breasts are undeveloped. Abdomen is flat and soft.

GENITAL:

There is absence of pubic hair. Labia majora are full, convex and coaptated with the pinkish labia minora presenting in between. On separating the same are disclosed a congested vulvar mucosa and an elastic, fleshy-type hymen with shallow, healed lacerations at 3 and 9 o'clock. External vaginal orifice admits the tip of the examining index finger.

CONCLUSION:

Subject is in non-virgin state physically. There are no external signs of recent application of any form of trauma.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa."[5]

On a sole assignment of error that the trial court allegedly convicted appellant despite the existence of reasonable doubt, counsel for appellant predictably attacks the credibility of the minor victim's testimony for want of any

other possible defense. Appellant also banks on the possibility that his disclaimer of any participation in the crime and the imputation and shifting of culpability therefor on a gambling friend of his, one Rostum, would prosper as a credible defense.

The Solicitor General convincingly met the contentions of appellant, and we quote his arguments with approval:

"Appellant contends that victim Arlene Cabe's testimony is not credible because --

'1) she did not struggle or make any outcry at the time of the alleged rape; 2) she accepted P20.00 from the accused on two occasions of the rape; 3) she never told her mother or any other relative(s) about the sexual molestation.'

(Appellant's Brief, p. 5).

"Such contention is untenable because the above cited circumstances can be easily explained by the fact of the victim's tender age. It should be noted that Arlene Cabe, at the time of the rape, was only 11 years old. Considering her young age, she could easily have been intimidated by the appellant. In fact, appellant threatened her with a knife at the time of the first rape on October 3, 1988 (Tsn., p. 17, March 14, 1989).

"Anent appellant's claim that the victim did not tell anyone about the rape, this is belied by the record, particularly by the victim's own testimony, to wit:

'Q. Sometime on December 6, 1988, do you remember if your mother confronted you in connection with the sexual acts done to you by Mang Terio?

A. Yes, sir.

Q. What did your mother tell you on that occasion?

A. I reported all the things that Mang Terio did, sir.

Q. Did you come to know how your mother came to know about these sexual acts done to you by Mang Terio?

A. I reported it to her, sir. (Tsn., March 14, 1989, p. 10)'

"Hence, the victim's actuations were, contrary to appellant's contention, as natural as those expected of an 11-year old and grade-four student, which she was.

x x x

"Appellant insists that 'what makes Arlene's testimony incredible is the identical manner by which she was allegedly raped by the accused on October 3, 1988 and November 4, 1988.' (Appellant's Brief, p. 5)

"An analysis of the victim's statements on what transpired immediately prior to and during the rape, reveals that there is nothing incredible in what Arlene Cabe told the Court.

"Firstly, with respect to the manner she was led by the appellant to go inside the latter's house (requesting her first to buy cigarettes and deliver them to his house), this modus operandi of the appellant indeed happened. Hence, the witness' repetition of the appellant's modus operandi resorted to by him on the two occasions she was raped shows her tenacity to tell the truth.

"Secondly, anent the appellant's insertion of his penis inside the victim's vagina, there is no other way rape can be committed. Thus, the repetition of this circumstance in the victim's account of the two rape incidents is logical and credible.

"Lastly, the fact that appellant's penis was inside the victim's sex organ for five minutes in both instances is not an indicator of the falsity of the victim's testimony, but rather, reflects more of the appellant's sexual prowess,

or his lack of it.

"Hence, complaining witness Arlene Cabe cannot be faulted for giving similar accounts of the two rape incidents.

x x x

"Appellant tries to capitalize on the victim's alleged use of obscene language ('kinakantot n'ya ako') when she testified in Court to attack the witness' credibility. Again, this contention is untenable for the simple reason that calling a spade a spade is not an alteration or distortion of the truth. Moreover, this can be attributed to the victim's tender age and innocence. Thus, the limited vocabulary and lack of malice in uttering such words.

x x x

"In the case at bar, the trial court lends credence to the testimony of the victim Arlene Cabe after observing that - - -

'Despite her minority, Arlene Cabe was well composed during her testimony. She has a normal intelligence. She answered, the questions addressed to her promptly. She was credible. She described the force and intimidation employed against her by the accused in her cross-examination. (Tsn., March 14, 1989, pp. 17; 20-21; 23).

'Arlene testified that the accused had carnal knowledge of her on October 3, 1988 and on November 4, 1988. This was corroborated by the medico-legal findings made when Arlene was examined on December 7, 1988. Given the naivete and age of the complainant, it is difficult to conceive that her rape charges were fabricated. The fact that after the first rape, the complainant did not stay away from the accused who was able to gain carnal knowledge of her again is explicable from her young age and fear (People vs. Bano, 142 SCRA 476).'

(Decision, p. 4)

"Clearly, therefore, the trial court was completely justified in finding complaining witness Arlene Cabe's testimony credible."[6]

The gravamen of the offense of statutory rape, as provided in Article 335, paragraph 3 of the Revised Penal Code, is the carnal knowledge of a woman below twelve (12) years of age at the time she was raped; proof of intimidation or force used on her, or lack of it, is immaterial.[7] Furthermore, in this case, after each act the appellant threatened to kill complainant if she would tell anyone about his lascivious acts, each threat installing fear in the mind of the minor, which made her an "easy prey in his subsequent sallies." [8]

Appellant further claims that it was incredible for Arlene, after the rape, to nonchalantly go out clutching the twenty-peso bill and to continue playing with her friends. To him, it was unlikely that a young girl traumatized by a rape would act thereafter in a natural fashion. Yet, even among adults, different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response when one is confronted with a strange or startling or frightful experience.[9]

More important, appellant fails to consider that the victim is still of tender age. A child who is only eleven (11) years old may not yet know or fully realize the detestable nature and gravity of the acts committed upon her person. A child can easily be made to believe otherwise, as could have been the case of Arlene. On the other hand, it is not uncommon for young girls to conceal for some time the assaults on their virtue because of the rapist's threat on their lives.[10] It should be borne in mind that this case involves a victim of tender years and limited schooling whose actions under such difficult and trying circumstances are dominated more by fear than by reason. She cannot be expected to have such exceptional courage as to disregard a threat on her life.[11]

But even assuming that Arlene may have innocently or otherwise dispensed of her sexual favors as alleged by

appellant, particularly if she were paid for it, such fact cannot change the revolting truth that appellant molested an 11-year old child. Rape is committed even if the girl under twelve (12) years old consented to the sexual act or, for that matter, even if she were a prostitute.

The court below found the testimony of Arlene Cabe credible and convincing. It is a firmly settled doctrine that the findings of the trial court, which had the inestimable advantage of observing the detailed demeanor of the witnesses are entitled to great respect.[12] Nor has appellant invoked any justification for a departure from this rule.

Regarding the competency of a child to testify, the decision of this question rests primarily with the trial judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, as well as his understanding of the obligations of an oath. As many of these matters cannot be photographed into the record, the decision of the trial judge will not be disturbed on review, unless from what is preserved it is clear that it was erroneous.[13]

It is the theory of appellant that the rape case against him was fabricated by mother and daughter since they have a pique against him. The Court considers this final argument as nothing but a wild and desperate concoction by appellant in order to evade punishment for his ignominious acts of perversion. Surely, it is inconceivable that a mother would draw her young daughter into a rape scam, with all its attendant scandal and humiliation, just to rid herself of an unwanted stranger.[14]

WHEREFORE, the judgment appealed from is AFFIRMED, with the modification that accused-appellant is hereby ORDERED to pay complainant Arlene Cabe an increased indemnity of P30,000.00 in Criminal Case No. C-31834 and another P30,000.00 in Criminal Case No. C-31835, in line with current jurisprudence.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.
Sarmiento, J., on leave.

[1] Original Record, Criminal Case No. C-31834, 2; Original Record, Criminal Case No. C-31835, 2.

[2] Penned by Judge Rene Victoriano, Original Record, 62.

[3] Appellee's Brief, 4-6.

[4] Decision, Criminal Cases Nos. C-31834 and C-31835; Original Record, 59.

[5] Exhibits "E" to "E-4."

[6] Appellee's Brief, 7-11.

[7] *People vs. Mangalino*, 182 SCRA 329 (1990); *People vs. De la Cruz*, 56 SCRA 84 (1974).

[8] *People vs. Derpo*, 168 SCRA 447 (1988).

[9] *People vs. Ronquillo*, 184 SCRA 236 (1990).

[10] *People vs. Oydoc*, 125 SCRA 250 (1983).

[11] *People vs. Cruz, Sr.*, 151 SCRA 609 (1987).

[12] *People vs. Aboga, et al.*, 147 SCRA 404 (1987); *People vs. Estenzo, etc., et al.*, 72 SCRA 428 (1976).

[13] *Wheeler vs. U.S.*, 159 U.S. 523.

[14] *People vs. Bacani*, 181 SCRA 393 (1990).

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