

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO JIMENEZ Y MARQUEZ, ACCUSED-APPELLANT.

G.R. Nos. 92457-58. August 12, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Wilfredo Jimenez y Marquez, was charged with the crime of rape in Criminal Cases Nos. 33326 and 33327 before the Regional Trial Court of Kalookan City, Branch 131. The informations filed in said cases read, as follows (p. 20, Rollo):

“Crim. Case No. 33326:

“That on or about the 5th day of June, 1987 in Kalookan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there wilfully, unlawfully and feloniously lie and have sexual intercourse with one QUEENIE ARTIFICIO y MENDOZA, a minor of 9 (sic) years old, against the latter’s will and without her consent.

Contrary to law.’

“Crim. Case No. 33327:

“ That on or about the 4th day of June, 1987, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, did then and there wilfully, unlawfully and feloniously lie and have sexual intercourse with complainant ROWENA IBANEZ y MENDOZA, a minor 14 (sic) years of age, by means of force, threats and intimidation and against her will and without her consent.

Contrary to law.’ ”

Upon being arraigned on August 16, 1989, the accused-appellant entered the plea of not guilty to the offense charged in both cases. On the scheduled hearing, upon order of the trial court, the prosecution amended in open court the date of the commission of the crime considering that complainants Rowena Ibañez and Queenie Artificio testified, respectively, that the alleged rape happened on June 4, 1987 and June 5, 1987 and not on June 4, 1989 and June 5, 1989, as reflected in the original informations due to typographical error. After trial on the merits, the trial court rendered its decision on February 22, 1990, the dispositive portion of which, reads (p. 26, Rollo):

“WHEREFORE, the Court finds accused WILFREDO JIMENEZ y Marquez GUILTY beyond reasonable doubt of the crime of RAPE on two (2) counts and sentences him to DOUBLE RECLUSION PERPETUA, and to pay the victims the amount of Twenty-Five Thousand (P25,000.00) Pesos each or a total of Fifty Thousand (P50,000.00) Pesos as damages, and to pay the costs.

“SO ORDERED.”

The plaintiff-appellee’s version of the facts of this case was summarized by the trial court, as follows (pp. 21-22,

Rollo):

“x x x: On June 3, 1987, Rowena Ibañez, who was living with her aunt was fetched her mother, Lilia Hije, and was brought to Bagong Silang, Kalookan City to stay with the rest of her brother and sisters at the house of the common-law husband of her mother, the herein accused.

“On that same day, their mother went to Cabanatuan, Nueva Ecija to work. At early dawn, between 4:00 to 5:00 in the morning of the following day, when their brother Ron-ron went out to sell bread ‘pandesal’, the accused placed himself on top of Rowena while poking a knife ‘pisaw’ at her neck; that he took off her panty and inserted his private part into her private part and started pumping, moving his body up and down. When she went to urinate, she noticed a yellowish sticky mucous-like fluid attached to her panty and her private part was slippery when washed. She was repeatedly raped in Cabanatuan, until (sic) when her mother stopped working and stayed at the house since the latter got pregnant. Rowena further testified that she saw how her sister Queenie Artificio was raped by the accused; that she even begged to spare her since she was still very young but accused did not heed nor listen to her; afterwhich (sic), both sisters just talked and cried. The accused used to spank Rowena and oftentimes scolded (sic) without any reason at all. All these she kept to herself, for fear that once she told it to her mother they would all be killed as threaten (sic) by the accused, until one day while she was at the custody of her aunt in Project 3, Quezon City when she related to her aunt her sad experiences.

“The other complainant, Queenie Artificio was then seven (7) years old when her stepfather sexually abused her in the presence of her sister, Rowena, who was begging for mercy. The rape first happened on June 5, 1987, the accused, while naked lie down (sic) on top of her, holding a knife ‘pisaw’ poked at her neck; then he started to undress her and inserted his private part inside her private part and started pumping, afterwhich (sic) her private part ached; that this was done to her twice in Bagong Silang and once in Cabanatuan, Nueva Ecija. She also testified that she saw how her sister Rowena was raped by the accused.

“Zenaida Romualdo, the aunt of both complainants, testified that it was on May 8, 1989 when she visited them at Cabanatuan, Nueva Ecija and upon arrival, Rowena insisted that she go with her to Project 3, Quezon City; at first, she refused however when her mother gave assent, she brought Rowena along with her. A few days later, she went back to Nueva Ecija, this time, she took Rosalie, another sister and Queenie. While they were staying in Quezon City, Rowena told her about the rape, that she couldn’t tell her mother since the accused threatened to kill them; that Queenie was raped three times and whenever accused feels the urge, he would order the complainants to play with his private parts during his rest time at noon. Upon advise of her brothers, she sought help from Camp Crame.

“A complaint was filed before the Special Operations Group stationed at Camp Crame, Quezon City and (sic) immediately requested for medical examination of both complainants. As per medical certificate nos. M-1432-89 and M-1431-89 (Exhs. ‘D’ and ‘E’ respectively) and testified to by Dr. Emmanuel Arañas, Rowena Ibañez is still in virgin state while Queenie is in non-virgin state. With that on hand, the complainants (sic) respective sworn statements were taken, and immediately CIS men from the Special Operations Group conducted the investigation and arrested the accused on August 4, 1989 at St. Catherine St., Provident Village, Marikina.”

The accused-appellant’s different account of the facts of this case was also summarized by the trial court, as follows (p. 23, Rollo):

“The defense presented Lilia Hije, the mother of the two complainants and she testified on the controversy over the house in Quezon City, which is allegedly owned by her and presently occupied by Zenaida Romualdo, that it was the cause why such complaints were filed and that her children were being brain-washed.

“The accused adduced that he met Lilia Hije on August 9, 1987, and that after a lapse of one week they lived together. On November 1, 1987, they moved to Nueva Ecija due to misunderstanding between his mother and

his wife; that the children had to stop schooling because of such transfer. There were occasions that he had to whip Rowena, since she kept on fighting back and became hard to discipline. He denied having raped the complainants and asserted that such complaints were filed based on a personal grudge against him.”

As aforestated, the trial court convicted the accused-appellant of rape in both cases. Hence, the present appeal.

The accused-appellant assigns as errors committed by the trial court the following: 1) it allowed the amendment of the informations after he had pleaded not guilty to the original informations; 2) it found that the evidence for the prosecution is sufficient to establish his guilt; 3) it found that the victims testified in a logical manner; 4) it found that there was absence of motive on the part of the victims in testifying against him; and 5) it did not give weight to his evidence.

As regards the first assignment of error, the accused-appellant alleges that when the trial court allowed the amendment of the informations, he should have been re-arraigned under the amended informations and evidence adduced anew. Inasmuch as the trial court failed to do so, he was denied due process of law.

With respect to the rest of the assignment of errors, the accused-appellant alleges simply that the prosecution’s evidence suffers from inconsistencies and improbabilities, namely: 1) in Criminal Case No. 33326: a) Queenie Artificio was only seven (7) years old on the alleged date of the rape incident whereas he (accused-appellant) was twenty five (25) years old, therefore, she should have suffered heavy damage on her sexual organ but Exhibit E showed only a shallow laceration; and b) her testimony that after she was raped, he (accused-appellant) went back to sleep indicates that he has not done anything wrong; and 2) in Criminal Case No. 33327: a) Rowena Ibañez’ testimony that he (accused-appellant) was able to insert his private part into her private part is contradicted by the testimony of Dr. Emmanuel Aranas who stated that at the time of Rowena Ibañez’ physical examination, she was still a virgin, which fact is embodied in the medical report; b) her testimony that the rape took place inside a one-room hut which accommodates only about six (6) persons who sleep side by side and that she was in-between her older brother and Queenie who was then awake, renders improbable the commission of the crime; and c) Queenie Artificio’s testimony that after raping Rowena Ibañez, he (accused-appellant) went back to sleep is not a natural reaction of one who has just committed a heinous crime.

The appeal lacks merit.

It has not escaped the attention of the Court that when a party either aims at winning Our compassion or runs out of arguments (or never had any to begin with), he usually adopts the stratagem of pleading denial of due process. The plea may impress at first glance, what with all its plaintive invocation of the Bill of Rights, but it does not often succeed upon closer examination especially after considering the contentions of the opponent (see *Bautista, et al. v. Hon. Secretary of Labor and Employment, et al.*, G.R. No. 81374, April 30, 1991). The observations made by the Solicitor General, which conform with the records of this case, convinced Us to ignore said plea of the accused-appellant (pp. 80-81, Rollo):

“Appellant is now estopped from objecting to the amendment of the complaints (informations) because he has already (sic) waived such objection. The record shows that while appellant’s counsel made an initial objection to the motion of the fiscal to amend the complaints (informations), on the ground that the amendment is substantial (tsn, 8/31/89, p. 16), the said objection however was not pursued. If appellant really believes (sic) that the lower court committed error in allowing the amendment of the complaints (informations) but (sic) without re-arraigning appellant anew, why did he not raise that issue early on before the appellate Court in a petition for certiorari, for example? On the contrary, appellant not only kept silent afterwards about his alleged objection, but he also participated actively during the rest of the trial of the cases after the amendment was effected. In fact, appellant’s counsel even cross-examined the complainants regarding certain circumstances which happened on the amended dates of the incidents, or on June 4 and 5, 1987. Moreover, appellant himself

testified as to his whereabouts in June 1987, to establish his alibi that he could not have committed the crimes charged on June 4 and 5, 1987. All these facts indubitably show that the amendment of the complaints (informations) did not prejudice nor violate appellant's right to due process."

The Medico-Legal examinations which revealed "shallow, healed laceration at 5 o'clock" (Exhibit "E") of the hymen, in the case of Queenie Artificio and "in virgin state physically" (Exhibit "D"), in the case of Rowena Ibañez do not negate the fact established by the prosecution's evidence that they were raped by the accused-appellant. In the crime of rape, complete or full penetration of the complainant's private part is not necessary. Neither is the rupture of the hymen essential. What is fundamental is that the entrance, or at least, the introduction of the male organ into the labia of the pudendum is proved (People v. Castillo, G.R. No. 84310, May 29, 1991 citing People v. Cruz, G.R. No. 82121, December 29, 1989, 180 SCRA 765 and People v. Basas, G.R. Nos. L-48019-22, June 29, 1984, 130 SCRA 178). Within the level of their understanding, Rowena Ibañez and Queenie Artificio described to the court the manner by which the accused-appellant fulfilled his savage desire on them:

Testimony of Rowena Ibañez:

"Q- Madam Witness, on June 4, 1987, do you remember any unusual incident which happened to you?

"A- Yes, sir.

"Q- Will you please tell this Honorable Court what that unusual incident was?

"A- He (accused) lied (sic) down beside me, facing (sic) his body atop of (sic) me, and then after that, sir, I saw something on my private part similar to a 'mucus-like fluid' (sapon).

"Q- Do you remember what time of the day that was when you experienced that unusual incident?

"A- I do not exactly remember the time, sir, but I estimated it to be between 4:00 or 5:00 in the morning, sir.

"Q- You mentioned earlier that the accused went on top of you, do you remember if the accused was able to insert his private part on your...

"Atty. Pacis ?

Leading, your Honor. Objection, your Honor, leading.

"Court-

Sustained.

"Fiscal?

"Q- You mentioned earlier, Madam Witness, that the accused went atop of (sic) you, what happened next after he went atop of (sic) you?

"A- He was pumping, sir, his body was moving up and down, sir.

"Q- Were you dressed at that time?

"A- At first, I was, sir, later on, he removed my panty, sir.

"Q- How about the accused?

"A- He was not wearing any clothes, sir, he was naked.

"Q- Will you please tell this Honorable Court that at the time when the accused was making pumping motions

while he was on top of you, what happened next?

“A- I said that a mucus like fluid, I felt a mucus like fluid on my private part, sir.

“Q- And do you know...

“Court?

Excuse me.

“Q- Why, where was, if you know, the private part of the accused?

“A- In my private part, your Honor.”

(tsn, August 31, 1989, pp. 13-14)

“x x x.

“Atty. Pacis:

Now, what time were you awoken on June 4, 1987?

“A- Early in the morning, sir, I was awoken.

“Court:

Why?

“A- Because my private organ is aching, sir.

“Court:

Why, why was it aching?

“A- Because when he put his body atop of (sic) me, he also placed his private organ inside my private organ, your honor.”

(tsn, September 1, 1989, pp. 5-6)

Testimony of Queenie Artificio:

“Q- Now, tell the court, how you were raped by the accused Freddie Jimenez?

“A- He placed himself on top of me, sir. ‘Pinatungan niya po ako’.

“Q- What at the time when the accused placed himself at (sic) top of you, what was he wearing?

“A- None, sir.

“Q- Court:

What about, you, what were you wearing?

“A- I was wearing my dress, sir, after that he undressed me.

“Q- Fiscal:

How about your panty, what did he do, if you were wearing your panty?

“A- He took off my panty, sir.

“Q- Now, when the accused placed himself on top of you, what did he do?

“A- He was making pumping movement on top of my stomach, sir. ‘Lumulundag-lundag siya sa tiyan ko’.
(As witness demonstrating by using her right open palm an up and down movement).

“Q- Now, as the accused was pumping on top of you, what did you feel?

“A- My private part is aching, sir. ‘Masakit po ang pekpek ko’.

“Q- Why?

“A- Because he inserted his private organ inside my private part, sir.”

(tsn, September 15, 1989, pp. 9-10)

“x x x.

“Q- When your Papa Freddie was on top of you and making pumping gesture, where was his private organ?

“A- ‘Nasa akin po.’

“Court:

What do you mean, ‘nasa akin po’?

“A- What I mean, your honor, is that, his private organ was inside my private organ.

‘Ang ari niya ay nasa akin po.’”

(tsn, October 12, 1989, p. 5)

It is possible that the accused-appellant was not able to make a total penetration of the sexual organs of the complainants due to the latter’s youth (Rowena Ibañez was then 12 years old whereas Queenie Artificio was then 7 years old) when the rape was committed.

Rape can be committed inside a house or a small space where there are other occupants (People v. Indaya, G.R. No. 90296, April 25, 1991; People v. Viray, G.R. No. L-41085, August 8, 1988, 164 SCRA 135 citing People v. Opena, G.R. No. L-34954, February 20, 1981, 102 SCRA 755). Lust is no respecter of place. It appears that Rowena Ibañez’ testimony that her older brother was sleeping beside her at the time of the commission of the rape was only her impression. We agree with the Solicitor General that considering the circumstance that Rowena Ibañez was roused from her sleep by the accused-appellant (tsn, September 1, 1989, pp. 5-6) who even made threats on her life by poking a knife on her neck (tsn, August 31, 1989, pp. 14, 18; tsn, September 1, 1989, pp. 8, 10) she could not have observed accurately the persons who were beside her at that time. It is understandable that Rowena Ibañez failed to realize that at the time of the rape, her older brother was not actually in the house. According to Queenie Artificio, who witnessed the rape committed against Rowena Ibañez, their older brother was not present at that time because he already left to sell pandesal (tsn, October 13, 1989, pp. 11, 16). Although Queenie Artificio was awake at the time Rowena Ibañez was being raped by the accused-appellant, she was a helpless witness. We take into account the following circumstances which rendered Queenie Artificio subservient to the accused-appellant’s excessive sexual appetite: her age, the moral ascendancy of the accused-appellant, the threats that he will kill her should she report the incident (tsn, October 13, 1989, p. 3) and a knife was poked on the right side of Rowena Ibañez’ neck (tsn, October 12, 1989, p. 7).

The testimony of complainants that after they were raped by the accused-appellant, the latter went back to sleep is not difficult to believe. The accused-appellant must have felt safe in the thought that he had succeeded in instilling fear in the hearts of both complainants, that is why he did not bother to escape.

We find that the guilt of the accused-appellant for the crime of rape in both cases has been proven beyond reasonable doubt and, therefore, sustain his conviction based on the same ratiocination of the trial court which stands on its own merits (pp. 23-26, Rollo):

“In determining the guilt or innocence of the accused, the Court made use of the following well-known principles regarding prosecution of rape cases, to wit:

“a) That the accusation for rape can be made with facility; it is difficult to prove it but more difficult for the person accused, though innocent to disprove it;

“b) That in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and

“c) That the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense [People vs. Quintal, 125 SCRA 734 (1983); People vs. Villarosa, 161 SCRA 72 (1988)].

“As to the first quoted principle, the Court believes that although one could charge without much difficulty a person of the crime of rape however, for her to substantiate her charge right before the eyes of the Court is not only a delicate and sensitive task but also scandalous and humiliating as well.

“The Court noted that both complainants despite their tender age testified in a logical and straight forward manner. They sounded sincere and appeared candid and honest not only while at the witness stand but also while in the courtroom attending the proceedings of this Court. Both complainants identified the person who raped them in a solid and convincing manner. Besides, they could not possibly commit a mistake of identity as to the person of the accused because the latter was intimately related to their mother. ‘What is decisive in rape cases is complainant identified the accused.’ [People vs. Romilo, 146 SCRA 258 (1986)].

“Moreover, in the absence of malicious motive on the part of the complainants to falsely charge accused of this grave offense, the presumption is that they were not actuated by improper motive and consequently their testimonies are entitled to full faith and credit. ‘Unless motivated by her desire to bring to justice the culprit who had grievously wrong (sic) her, it is hard to believe that a (sic) woman of unsullied reputation (sic) to publicly disclosed (sic) that she has been raped’ (People vs. Gargoles, 83 SCRA 282 (1978)); ‘Complainant’s willingness and courage to face interrogation and judicial examination is a mute and eloquent testimony of the truth of her charge against her father’ [People vs. Ramos, 167 SCRA 476 (1988)].

“The contention of the accused that the charges were precipitated by the feeling of resentment the complainants are harbouring against him aggravated by the misunderstanding between the mother of the complainants and the sister of the complainants’ mother, who is now the present (sic) guardian of the complainants, is untenable. If it was (sic) true that the mother and the aunt of the complainants are fighting for their respective interests regarding a house, the expected reaction therefor is for the complainants to side with their mother.

“Further, evidence to be credible must not be inconsistent with human experience. ‘Evidence must not only proceed from the mouth of a credible witness but it’ must be credible in itself such as common experience and observation of mankind can approve as probable under the circumstances’ [People vs. Patog, 144 SCRA 429 (1986)].

“With regard to the second quoted principle, the rule is that the presence of an eyewitness to corroborate the testimony of complainant can be dispensed with. In fact, complainants’ sole testimony if positive and credible is sufficient to justify conviction therefore with more reasons (sic) that the testimony of complainants herein be given weight because each of them corroborated each other’s testimony in a believable and convincing manner. Here it must be noted that the presence of Rowena when Queenue (sic) was being raped and vice versa was well explained by the fact that both of them live in the same residence, a small one-room house.

“In discussing the third quoted principle, it suffices to state that the prosecution thru the evidence adduced was able to convince the Court that it was the complainants who were telling the truth. ‘It is unthinkable for an unmarried teen girl to file rape complaint if it were not true’ [People vs. Reyes, 137 SCRA 99 (1985)]; ‘It is hard to believe that a woman would undergo the expense, trouble and inconvenience of a public trial not to mention the scandal, embarrassment and humiliation it inevitably entails, and allow an examination of her private parts, if her motive was not to bring to justice the persons who had abused her’ [People vs. Detuya, 154 SCRA 410 (1985)]; and, ‘No woman of tender age will concoct a story of defloration’ [People vs. Derpo, 168 SCRA 447 (1988)].

“The accused, to free himself from criminal liability denied having raped the complainants. However, the defense of denial cannot assume importance in the cases at bar. As a general rule, ‘a bare denial of guilt is insufficient to overcome the positive testimony of the culpability of an accused’ (sic) [People vs. Sinau-ay, 138 SCRA 221 (1985)]. Further, the defense of denial cannot prevail over explicit identification of the offended rape victims (sic).

“Furthermore, the contention of the accused, that it will be quite impossible for him to have the opportunity to rape the complainants because he has not yet met the mother of the victims at the time the alleged crimes happened, is weak. Here it must be remembered that the reason why complainant Rowena was fetched by her mother was for the former to celebrate her birthday in her mother’s house and at that point in time her mother was already having an affair with the accused and were already cohabiting in the same abode.

“Lastly, the fact that complainants concealed for sometime the sexual assaults on their virtues does not in any manner affect their cause of action. ‘Delay in reporting the rape is not fatal and does not show consent to the sexual intercourse’ [People vs. Cariño, 167 SCRA 285 (1988)]. In addition, complainants justified their delay in reporting the matter to the authorities that is, they were afraid due to death threats made against them by the accused. The failure of a fourteen year (sic) victim to immediately reveal her harrowing experience does not affect her credibility. One should not expect a young girl to act like an adult or mature and experienced woman who would know what to do under difficult circumstances and who would have the courage and intelligence to disregard threat on her life and the members of her family and complain immediately that she had been forcibly deflowered. It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapists’ threat on their lives’ [People vs. Rosario, 159 SCRA 192 (1988)].”

The sexual violence inflicted upon the complainants was extremely vicious. It is disheartening that the incidents happened at the time complainants were no longer in that “age of amnesia,” thereby leaving indelible marks in their memories.

ACCORDINGLY, the decision appealed from is hereby AFFIRMED subject to the modification that the civil indemnity is increased to P40,000.00 in each case.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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