

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO ALEGADO Y DELIMA, ACCUSED-APPELLANT.

G.R. Nos. 93030-31. August 21, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The accused-appellant stands charged and convicted of two counts of rape by the Regional Trial Court of San Carlos City, Branch 58 in its decision promulgated on October 26, 1989 with the following dispositive portion:

“WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of rape punished under Article 335 paragraphs 1 & 3 of the Revised Penal Code, said accused is hereby sentenced to RECLUSION PERPETUA on both counts, the sentences to be served successively, to pay the offended party the sum of Twenty Thousand Pesos (P20,000.00), and to pay costs of suit.” (RTC Decision, p. 8; Rollo, p. 32)

This appeal prays for a reversal of the trial court’s judgment of conviction and submits before us the following assignment of errors, to wit.:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF STATUTORY RAPE AS DEFINED AND PENALIZED UNDER ART. 335, PARAGRAPH 3 OF THE REVISED PENAL CODE DESPITE THE PROSECUTION FAILURE TO PROVE WITH CERTAINTY THE ACTUAL AGE OF THE OFFENDED PARTY.

II

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT (Appellant’s Brief, p. 1, Rollo, p. 55)

The accused-appellant, in two criminal complaints filed by the offended party herself and docketed as Criminal Cases Nos. RTC-437 and RTC-438, was charged with rape on two counts committed as follows:

“That on or about 7:00 p.m., April 20, 1988 at the Public Market, San Carlos City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there wilfully, unlawfully and feloniously have carnal knowledge of the herein offended party, CRISTINA DEANG y VILLAROSA, a girl below twelve (12) years of age, against her will and without her consent. (Criminal Case No. RTC-437; Rollo, p. 14)

“That on or about 6:00 p.m., April 14, 1988 at the Public Market, San Carlos City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully and feloniously have carnal knowledge of the herein offended party, CRISTINA DEANG y VILLAROSA, a girl below twelve (12) years of age, against her will and without her consent.” (Criminal Case No. RTC-438; Rollo, p. 16)

At the pre-trial, both the prosecution and the defense agreed on a joint trial and stipulated on only one fact, i.e., that the accused, as watchman of the San Carlos City public market was inside the said premises during the two occasions when the alleged rapes transpired. Both parties presented two common issues for the trial court's consideration, namely: (1) whether the offended party was actually below 12 years old at the time of the incidents; and (2) whether the accused had carnal knowledge of the offended party by means of force and intimidation (Pre-trial Order dated June 2, 1988; Records, p. 16)

The antecedent facts as stated by the Solicitor General in the People's brief are as follows:

"On April 14, 1988, at about 6:00 o'clock in the afternoon, complainant was playing at the Freedom Square inside the public market of San Carlos City when appellant, a 170-pound, 53 year old market watchman at the time, held her by the hand and took her upstairs to the second floor of the public market building which houses some government offices and which at the time was expectedly deserted (tsn, May 17, 1989, pp. 13, 21-22). When they reached the upper floor of the building, appellant ordered complainant to hold his penis and masturbate it (ibid, p. 22). Thereafter, appellant ordered complainant to lie down, and when she refused, he pushed her down on the floor (ibid). When complainant was lying prostrate on her back, appellant placed himself on top of her while she was still wearing her 'pedal pusher' shorts and panty (ibid, p. 23). So, appellant forced her to take off her pedal pushers and panty (ibid, pp. 26-27) and thereupon he lay on top of her (ibid). Appellant then tried to insert his penis into her vagina but it did not penetrate fully before he ejaculated (ibid, pp. 23, 27--28). Complainant bled a little (ibid, p. 52) Thereafter, appellant gave complainant P2.00 and left (ibid, p. 28). Complainant stood up and went down the building but never told anybody about it because she was afraid appellant would kill her (ibid, p. 28)

On April 20, 1988, at about 7:00 o'clock in the evening, complainant was sitting at the Freedom Square when appellant approached her and told her to go with him upstairs to the second floor of the public market (tsn, May 17, 1989, pp. 11-12). Complainant refused but appellant shoved her towards the stairs, held her by the left arm, and brought her to the upper floor near the civic center (ibid, pp. 12-13). There, appellant ordered complainant to take off her shorts and panty, but she refused (ibid, p. 14). Appellant then tried to take off her shorts and panty by himself but she resisted and told the former she would not submit to his evil desires (ibid). Thereupon, appellant threatened to kill complainant if she would not take off her shorts and panty (ibid). Then appellant again tried to remove complainant's shorts and panty and the latter out of fear allowed him to do it (ibid). When appellant succeeded in removing complainant's shorts and panty, he forced her to lie down and then placed himself on top of her (ibid, p. 15). Appellant was then already without his pants on (ibid). Appellant inserted his penis into complainant's vagina but it took sometime before his organ could penetrate the girl (ibid). When it did, complainant felt excruciating pain and begged appellant to stop (ibid, p. 16). Appellant just ignored her and continued on without saying anything (ibid). Complainant felt some liquid oozing out from appellant's organ and into her being (ibid, p. 17). And after appellant had withdrawn his sex organ, complainant discovered that her vagina was bleeding (ibid). Appellant then stood up and told her not to tell anybody about it (ibid, pp. 17-18). Then appellant gave her P2.00 and left (ibid, p. 18).

As appellant was going downstairs, he was seen by Patrolwoman Evangeline Alfaro, a member of the San Carlos City INP assigned at Precinct No. 1, a police outpost near the main entrance of the public market (tsn, September 28, 1988, pp. 4-5). Pat. Alfaro knew appellant well because he was the public market watchman at the time (ibid, p. 5). A minute later, Pat. Alfaro saw complainant coming down the same stairs (tsn, September 28, 1988, p. 6; May 17, 1989, pp-18-19). Pat. Alfaro noticed that complainant was pale, with blood flowing to her thighs and legs, and was reeling as if feeling dizzy (tsn, September 28, 1988, p. 6)

Pat. Alfaro approached complainant and asked what happened to her (tsn, September 28, 1988, p. 6; May 17, 1989, pp. 19-20). Complainant answered that she was taken upstairs and raped by appellant (ibid). Immediately, Pat. Alfaro brought complainant to the city hospital where she was examined by Dr. Oscar Jagdon in the presence of two medical technologists (tsn, September 28, 1988, pp. 7-8; May 17, 1989, p. 20). Dr. Jagdon confirmed the report that indeed complainant was raped (ibid). Thereafter, Pat. Alfaro reported the

incident to the Station Guard by phone then took complainant to the police station after the medical examination (tsn, September 28, 1988, p. 8; May 7, 1989, p. 20). When they reached the station, appellant who had already been taken into custody was readily identified by complainant as the rapist (tsn, September 28, 1988, pp. 8--10; May 17, 1989, pp. 20-21). Complainant was then investigated and she rendered her statement to the police.

Dr. Oscar Jagdon, who examined complainant at about 8:40 o'clock in the evening of April 20, 1988, found some secretion inside complaint's vagina along the cervical wall which, upon laboratory examination, turned out to be sperm cells and that complainant's vagina was lacerated, one (1) centimeter long, at 9:00 o'clock position although there was only partial penetration of the male organ into complainant's vagina (tsn, August 10, 1988, pp. 4-9; Exhibit 'E')." (Rollo, pp. 84-89)

On the other hand, the accused-appellant's version as summarized in his brief reads:

"Evidence for the Defense:

Alfredo Alegado testified that on April 14, 1988 at about 6:00 p.m., he was on duty, he being a watchman of the public market. His tour of duty is from 6:00 p.m., to 6:00 a.m. the following day. Before 7:00 p.m. of that day, he and his co-watchman roamed around the area checking the padlocks of the stores if they are in order. At about 8:30 p.m., they closed all the doors of the vegetables section, meat section and the dried fish section. He knows Cristina Deang who used to sell calamansi in the area. On April 14, 1988, he did not meet Cristina Deang as he and his companions were then busy roving around the area. On April 20, 1988, at about 5:00 p.m., he was having snacks at Valdevia Street, with Cpl. Allarce and Lito Alvarez. They stayed there until about 7:30 p.m. when to his surprise, he was arrested and brought to the station by Pat. Apuhin and companions including Pfc. Evangeline Alfaro. From 5:00 p.m., to 7:30 p.m. on April 20, 1988, he never met and/or saw Cristina Deang. Pfc. Evangeline Alfaro has been harboring ill-feelings on him when on a certain occasion, he turned down her request to ask the four (4) armed men whom they saw in the market (what they wanted) (t.s.n., pp. 2-3, September 14, 1989).

Sgt. Rolando Allarce testified that he knew accused because he is assigned at the police precinct in the public market. At about 5:00 p.m. on April 20, 1988, he was invited by Alfredo Alegado to have a snack at Namie's Lunch. They finished having snack at about 6:00 p.m. Thereafter, Alfredo Alegado and Lito Alvarez invited him to go to Valdevia Street for a drinking spree. He accepted their invitation and went with them. He went out at about 7:00 p.m., leaving behind Alfredo Alegado in the store. (t.s.n, pp. 25-27, *ibid*)" (Rollo, pp. 59-60)

Whether or not any cogent reason exists to constrain us to reverse the trial court's verdict of conviction under paragraphs 1 and 3 of Article 335 of the Revised Penal Code is the issue in this appeal.

Firstly, the accused-appellant contends that the offended party's actual age at the time of the alleged incidents of rape was not established with certainty, hence, it was error on the part of the trial court to convict the accused-appellant of statutory rape as defined and penalized under paragraph 3, Article 335 of the Revised Penal Code.

We are not persuaded. The testimonies of the prosecution witnesses, the offended party herself and her maternal grandfather, Cornelio Villarosa, as to the fact that the victim was born on September 5, 1976 do not constitute hearsay evidence as claimed by the accused-appellant but rather fall under the exceptions to the hearsay rule as provided under sections 39 and 40 of Rule 130 of the Revised Rules on Evidence. Under Section 40 of the said Rule, it is provided, in part, that:

"SEC. 40. — Family reputation or tradition regarding pedigree — The reputation or tradition existing in a family previous to the controversy, in respect to the pedigree of any of its members, may be received in evidence if the witness testifying thereon be also a member of the family, either by consanguinity or affinity. xxx"

The word “pedigree” under Section 39 of the same Rule includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred and the names of the relatives.

In the case of *Lazatin v. Campos*, 92 SCRA 250, 261 [1979], we stated that:

“xxx [D]eclarations in regard to pedigree, although hearsay, are admitted on the principle that they are natural expressions of persons who must know the truth (See Sec. 33, Rule 130 Revised Rules of Court now Sec. 39, Rule 130 under the new Rules). Pedigree testimony is admitted because it is the best that the nature of the case admits and because greater evil might arise from the rejection of such proof than from its admission. (Wigmore on Evidence, Sec. 1420)”

In the present case, the applicability of Rule 130, Section 39 of the Revised Rules on Evidence to prove the victim’s age is beyond question. The said provision contains three requisites for its admissibility, namely: (1) that there is controversy in respect to the pedigree of any of the members of a family; (2) that the reputation or tradition of the pedigree of the person concerned existed previous to the controversy; and (3) that the witness testifying to the reputation or tradition regarding the pedigree of the person must be a member of the family of said person. All these preconditions are obtaining in the case at bar considering that the date of birth of the rape victim is being put in issue; that the declaration of the victim’s grandfather relating to tradition (sending a child to school upon reaching the age of seven) existed long before the rape case was filed; and that the witness testifying to the said tradition is the maternal grandfather of the rape victim.

Thus, we quote the pertinent portions of Cornelio Villarosa’s testimony:

“PROSECUTOR FABROZ: (to witness)

Q.

Mr. Villarosa, how many children do you have?

A.

I have 5 children.

Q.

How old is the eldest?

A.

Thirty Nine (39) years old.

Q.

How about the youngest?

A.

May be 24 years old because I forgot the birth date.

Q.

The complainant in this case is a certain Cristina Deang. Do you know her?

A.

Yes, sir.

Q.

Why do you know her?

A.

She is my granddaughter.

Q.

If she is in court, would you able to point her?

A.

Yes, sir.

(At this juncture the witness is pointing to a person sitting inside the courtroom who when asked answered by the name of Cristina Deang.)

Q.

Who is the mother of Cristina Deang?

A.

Angelita.

Q.

Angelita Villarosa?

A.

Yes, sir.

Q.

Is she your daughter?

A.

Yes, sir.

Q.

Is she here?

A.

No, she is not here.

Q.

Where is she now?

A.

I don't know where she work now, because she did not send a letter to me.

Q.

The last time, where is her whereabouts?

A.

She was in Manila, my last knowledge about her whereabouts.

Q.

You said, Cristina Deang was the daughter of your daughter, Angelita. Do you know how many children does Angelita have?

A.

She has five (5) children.

Q.

With whom is this Cristina Deang living now?

A.

In our residence.

Q.

How did it happen that Cristina Deang has been living with you.

A.

The mother left her to me.

Q.

When was it that the mother left her to you?

A.

In 1983.

Q.

How old was Cristina Deang at the time her mother left her to you?

A.

The mother of Cristina Deang told me that she was born in 1976 and please let her go to school.

ATTY. BRIONES:

I would like to make it of record that the information gathered by the mother, Angelita, is a hearsay your Honor.

PROSECUTOR FABROZ:

I would like to prove the fact about the birth of the child...

COURT:

Let it stay in record.

PROSECUTOR FABROZ:

Q.

By the way, do you have a talk or conversation with your daughter, Angelita, the mother of the complainant Cristina Deang, when was Cristina Deang born?

A.

We did not talk about the birth of Cristina, but she told me to let her daughter Cristina go to school because she is already 7 years old.

Q.

Did you ask her about the birth of Cristina Deang?

ATTY. BRIONES:

I think that is misleading your Honor.

COURT:

Witness may answer.

WITNESS:

A.

That is what she told me, she was born on September 5, 1976.

PROSECUTOR FABROZ:

Q.

So based from the information you get from your daughter Angelita, did you in fact send your granddaughter Cristina Deang to school?

A.

Yes, sir.

Q.

Where?

A.

SMAC Elementary School.

Q.

What grade did you send her?

A.

Grade I.

Q.

Was she able to finish Grade I?

A.

No, sir. (TSN, January 31, 1989, pp. 4-7)

Moreover, the offended party herself categorically stated in open court that she was born on September 5, 1976

(TSN, May 17, 1989, p. 8). As correctly submitted by the Solicitor General:

“It is long-settled, as early as in the cases of *U.S. v. Bergantino* (3 Phil. 118 [1903]) and *U.S. v. Angeles* (sic) and *Sabacahan* (36 Phil. 246, 250 [1917] citing *U.S. v. Estavillo and Perez* (10 O.G. 1984), that the testimony of a person as to his age is admissible although hearsay and though a person can have no personal knowledge of the date of his birth as all the knowledge a person has of his age is acquired from what he is told by his parents (*U.S. vs. Evangelista*, 32 Phil. 321, 326 [1915]) - he may testify as to his age as he had learned it from his parents and relatives and his testimony in such case is an assertion of family tradition (*Gravador v. Mamigo*, 20 SCRA 742) xxx” (Rollo, p. 93-94)

Inasmuch as the accused-appellant failed to present contrary evidence to dispute the prosecution’s claim that the victim in this case was below twelve (12) years old at the time of the rape incidents under consideration, we affirm the trial court’s finding that the victim in these rape cases was under twelve years of age.

Time and again we have held that the gravamen of the offense of statutory rape as provided under Article 335, paragraph 3 of the Revised Penal Code is the carnal knowledge of a woman below twelve years old. (*People v. Edgardo Puedan y Lalongisip*, G.R. No. 92586, April 26, 1991 citing *People v. Villegas, Jr.*, 127 SCRA 195, 200 [1984]; *People v. Mangalino*, 182 SCRA 329 [1990] citing *People v. San Buenaventura*, 164 SCRA 150 [1988] and *People v. Villegas, Jr.*, supra). Hence, the only elements of statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such woman is under twelve (12) years of age. (*People v. Santos*, 183 SCRA 25 [1990]) It is not necessary to prove that the victim was intimidated or that force was used against her because in statutory rape the law presumes that the victim on account of her tender age, does not and cannot have a will of her own. (*People v. Bacani*, 181 SCRA 393 [1990]; *People v. Lualhati*, 171 SCRA 277 [1989]; *People v. Derpo*, 168 SCRA 447 [1988])

Considering that in the instant case there is clear and competent evidence that the victim was under twelve (12) years old at the time of the rape incidents complained of, the second argument purported by the accused-appellant that the alleged rapes were not attended by any force or intimidation must also fail. Proof of carnal knowledge of the victim in this case who was only eleven (11) years old on the two separate occasions reported (April 14 and 20, 1988) is overwhelming while unnecessary force and intimidation also appear in the records. The offended party’s testimony regarding the abominable and wicked acts of the accused-appellant against her chastity on the two occasions indicated in the separate informations filed by the victim herself was given in a straightforward manner without any indication that the same was motivated by any ill-feeling toward the pinpointed perpetrator. The fact of rape on the said occasions related by the offended party was corroborated by the examining physician whose medical finding revealed the presence of sperm cells inside the victim’s sexual organ due to partial penetration of the male organ into it.

It is axiomatic in rape cases that the slightest penetration of the female’s private organ is sufficient to consummate the crime. (*People v. Jun Aquino* [John Aquino], G.R. No. 83214, May 28, 1991 citing *People v. Cruz*, 180 SCRA 765 [1989]; *People v. Paton-og*, 155 SCRA 675 [1987]; *People v. Alvarez*, 163 SCRA 745 [1988]; *People v. Bacani*, supra). A careful review of the evidence on record readily shows that the trial court did not commit any reversible error in disregarding the defenses of denial and alibi given by the accused-appellant and in finding that the accused-appellant was guilty beyond reasonable doubt of two counts of statutory rape. We affirm the trial court’s verdict of conviction in consonance with our oft-repeated pronouncement that we accord great respect to the trial court’s findings of fact in the absence of a showing that certain facts of substance and value were erroneously overlooked that, if considered, might affect the result of the case (see *People v. Eleuterio Raptus y Jeray*, G.R. Nos. 92169-70, June 19, 1991 citing *People v. Aboga, et. al.*, 147 SCRA 404 [1987]; *People v. Estenzo, et al.*, 72 SCRA 428 [1976]; see also *People v. Frankie Arenas, et al.* G.R. No. 92068, June 5, 1991,

citing *People v. Somera*, 173 SCRA 684 [1989]; *People v. Baysa*, 172 SCRA 706 [1989]; *Aguirre v. People*, 155 SCRA 337 [1987])

Lastly, we commend the trial court's additional finding that the commission of the rapes in question was attended by force and intimidation although for conviction under Article 335 paragraph 3 of the Revised Penal Code such finding is no longer necessary. It bears emphasis, therefore, that the accused-appellant not only took advantage of the offended party's tender age in giving vent to his aberrant sexual behavior but also perpetrated the carnal acts complained of through force and intimidation. There is no merit in the accused-appellant's contention that the trial court abused its discretion in concluding that there was force and intimidation since the information did not contain any allegation to that effect simply because the phrase "against her will and without her consent" contained in both informations charging the accused-appellant of rape connotes the attendance of force and intimidation.

The absence of external signs of physical injuries and the failure of the victim to shout for help at the first opportunity do not negate the commission of rape contrary to the accused-appellant's propositions. The force used in rape cases need not be absolutely overpowering or irresistible. What is essential is simply that the force employed was sufficient to allow the offender to consummate his lewd purpose (see *People v. Cpl. Mario Ramos*, G.R. Nos. 92626-29, May 27, 1991 citing *People v. Mendoza*, 163 SCRA 568 [1988]; *People v. Tablizo*, 182 SCRA 739 [1990] citing *People v. Pasco, et al.*, 181 SCRA 233 [1990]; *People v. Villaflores*, 174 SCRA 70 [1989] citing *People v. Abonada*, 169 SCRA 530 [1989]).

We further note with approval the trial court's observation that the accused-appellant's act of giving the offended party the sum of P2.00 after each of the aforesaid "forcible copulation" apparently as "full atonement for his dastardly act" smacks of "insult a hundred times compounded." The accused-appellant, despite the trial court's strong words, even had the gall to reiterate before us his claim that the acceptance of the said measly amount of P2.00 was tantamount to a tacit consent on the part of his victim. We deplore such a highly offensive and depraved argument for we cannot allow the innocent and helpless victims of unsolicited and forcible defloration to be brutally insulted while yet nursing their irreparably wounded sexual purity. Considering the age of the victim, the depravity of the crimes, and the psychological trauma involved, we increase the indemnity to P50,000.00 in accordance with the recent rulings in the cases of *People v. Cpl. Mario Ramos*, supra; *People v. Edgardo Puedan y Lalongisip*, supra; and *People v. Rodante Felipe*, G.R. No. 90390, October 31, 1990.

WHEREFORE, in view of the foregoing, the appealed decision is AFFIRMED with MODIFICATION that the amount of civil indemnity which the accused shall pay to the offended party in each of the two rape cases is hereby increased to P50,000.00.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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