

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO SABELLINA AND CRISANTO BACULIO, ACCUSED-APPELLANTS.

G.R. Nos. 93514-15. December 01, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

RICARDO SABELLINA and CRISANTO BACULIO appeal from the decision of the court a quo^[1] convicting them of rape, and sentencing each of them to reclusion perpetua and to indemnify the complaining witness in the amount of P12,000.00.

On 22 August 1988, at around two o'clock in the morning, in Tagpaco, Sinalac, Initao, Misamis Oriental, 13-year old Evangeline Sabellina was sleeping in their house together with her parents Moises and Natividad, brothers Eddie, Ely and Rito, and sisters Jocelyn, Evelyn and Marina. Evangeline was roused from her sleep by persons calling out repeatedly, "Nong Moises, Nang Vidad, all of you come down so that blood will not flow."

Natividad peeped through the bamboo slits of their house and recognized Ricardo Sabellina and Crisanto Baculio as the persons shouting. Ricardo is the cousin of Evangeline, the nephew of Moises, and the common-law husband of Evangeline's half-sister Alicia Galarpe. Responding to the call, Natividad shouted at Ricardo, "Dong, just come upstairs because it is muddy downstairs." The T-shirts of Ricardo and Crisanto were wet.

Ultimately, all the members of the Moises Sabellina household had to go down. At gunpoint, they were told by Ricardo to line up near the canal. He told them not to move because, according to him, what he and Crisanto were doing was "strafing." Ricardo struck Natividad on the head, back and hands with his gun and then hit Moises on the right shoulder and back. Natividad asked the appellants what they wanted, and Crisanto answered that he was getting Jocelyn, who at that time was pregnant by him, so she could give birth in his house.

While holding a knife, Crisanto warned the Sabellina family that he would kill them and throw their bodies to the Alubigid River if they resisted.

Ricardo and Crisanto then tied Moises and Natividad Sabellina. While Ricardo was holding the family at bay with a gun, Crisanto forcibly led Evangeline to the lower portion of the house and then ordered her to remove her panties, threatening her with death if she refused. After Evangeline complied he told her to lie down. She resisted but Crisanto kicked her on the thigh until she fell to the ground. He took off his trousers and briefs, pressed his knees on her thighs, and the inevitable had to happen. He inserted his penis into her vagina and had sexual intercourse with her. Evangeline cried, but Crisanto asked her, "Which do you prefer, the lives of your parents or we consummate this?" Evangeline could not answer.

After the sexual congress, Crisanto brought Evangeline back to the house and told Ricardo, "Commander, she did not squeal." Ricardo then took hold of Evangeline and brought her back to the place where Crisanto raped her. There Ricardo also ordered Evangeline to remove her panties, warning her that he would stab her if she resisted his advances. Like Crisanto, Ricardo also ordered her to lie down and then inserted his penis into her sex organ.

After satiating his libido, Ricardo brought Evangeline back to where her parents were. He and Crisanto warned the whole family not to go up to their house because they would come back.

After the rapists left, Evangeline and her mother went to their neighbor Marceliano Bullecer, a member of the Civilian Home Defense Force (CHDF), and reported the outrage. Bullecer with some companions went to arrest Ricardo and Crisanto, took them to the Army Camp at Camilon and then to the Initao Police Station where they were investigated. The police authorities also questioned Evangeline and Natividad.

Evangeline was subsequently taken by her mother to the clinic of Dr. Concepcion R. Banogon, a government physician, for physical examination. Dr. Banogon found the vagina of Evangeline with laceration at 7 o'clock position with fresh oozing blood upon insertion of a finger. It was also found positive for spermatozoa.

The version of the defense is that Ricardo Sabellina, 33, married, and a detention prisoner of the Provincial Jail of Cagayan de Oro City was at home with his family in Sinalac, Inatao, at dawn of 22 August 1988; that appellant Crisanto Baculio arrived at five o'clock in the afternoon of the previous day, 21 August 1988; that they stayed there and drank tuba with friends until six o'clock in the morning of 22 August 1988; that they stayed indoors during that time as it rained; that after Crisanto and other guests left, Ricardo was arrested by Antonio Quintera, a CHDF member, and brought to the Camilon Military Detachment in Sinalac. Ricardo claimed that he was maltreated and forced to confess participation in the rape of Evangeline but refused to admit guilt. He was then taken to the Initao Police Station and incarcerated. When asked as to what could be the reason for the charge against him and Crisanto, Ricardo replied that Evangeline's family was mad at him for being the common-law husband of her sister Jocelyn.

Appellant Crisanto Baculio advanced the same story of a drinking spree the whole night of 21 August 1988 until the following morning of 22 August 1988. He claimed that the rape charge was a lie.

In this appeal, accused-appellants contend that the trial court erred (a) in giving credence to the testimonies of Evangeline and her mother, (b) in holding that they (both accused) were positively identified, and (c) in convicting them of rape.[2]

As regards the first assigned error, accused-appellants allege that the medical certificate presented by the prosecution does not show that rape was committed because of the absence of extragenital or bodily injuries. Appellants further argue that the testimonies of the victim and her mother are replete with inconsistencies thus -

One. On direct examination by the prosecution as to what unusual incident she witnessed at 2:00 o'clock dawn of August 22, 1988, she went on to describe how two persons went to their house, called her parents and asked them to come down, and after they came down, she was allegedly raped by CRISANTO BACULIO and later by RICARDO SABELLINA x x x x However, on cross-examination, when she was asked when the alleged rape happened, she could not recall the exact date and merely uttered "August 3, 19."

Two. She mentioned that the two persons who called them "continued pointing their guns to my parents." But on cross-examination, she tried to clarify that there was only one gun and one knife. Complainant gave no description of the gun that was used. Accused CRISANTO BACULIO allegedly held a gun, while accused RICARDO SABELLINA held the knife. This is inconsistent with the testimony of her mother that accused RICARDO SABELLINA was the one holding the gun and accused CRISANTO BACULIO was holding the knife.

Three. She testified that when they were outside their house she was asked to stand up and accused CRISANTO BACULIO brought her to the lower portion of the house where she was allegedly raped. Her mother, in turn, testified that accused CRISANTO BACULIO picked up her daughter and said "Nang Vidad, I will only ask something from your daughter." Complainant never mentioned about this utterance.

Four. Again on direct examination, she stated that they were asked to come down from the house and they did so for fear that they would be shot at. But on cross-examination, she stated that her mother answered the calls of the two persons by saying, "Dong, you may come upstairs so we can have our conversation here because it is muddy downstairs." Then she stated that her mother later opened the door to let the accused in the house." [3]

Lastly, appellants submit that there was no showing at all that Evangeline cried or tried to resist their advances.

The trial court gave full faith and credit to the testimony of Evangeline that she was raped by appellants Ricardo Sabellina and Crisanto Baculio. It is axiomatic that the evaluation by the trial court of the testimony of a witness is accorded with the highest respect because it is the trial court that has the direct opportunity to observe the witness on the stand and determine if she is telling the truth or not, [4] except when such evaluation was reached arbitrarily or when the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have affected the result of the case. [5] But none of such exceptions can be applied in this case to the court a quo.

The contention of the defense that the absence of contusions or external injuries on the body of Evangeline belies her testimony that she was kicked on her thigh by appellant Baculio is pointless. We have ruled time and again that the absence of external signs of physical injuries does not negate rape. [6]

We find no substantial inconsistencies in the testimonies of Evangeline and her mother. In fact, when read and taken together, their statements agree on material points. Although there may be minor lapses in the testimony of Evangeline, these are to be expected of a person recounting details of a humiliating experience which are painful to recall. The fact that she was not able to mention the date of the rape when she was asked for the second time is not fatal to the prosecution. The precise date when victim was sexually abused is not an essential element of the offense. [7]

With regard to the issue on who of the appellants was holding a gun and who was holding a knife when each of them raped Evangeline is clearly explained in her testimony:

Q. After that, what did they do?

A. This Crisanto Baculio brought me to the lower portion of our house and upon reaching that place he told me to put off my panty.

Q. Did you do as ordered?

A. Yes sir, because Crisanto Baculio told me that if I would not take off my panty he would kill and shot (sic) me with his gun.

Q. How about Ricardo Sabellina, what did he do, if any?

A. He was still in our house.

Q. Crisanto Baculio was the one who brought you to the lower portion of your house?

A. Yes, sir.

Q. What did he do after he commanded you to take off your panty?

A. After that, he told me to lie down. I did not but he kicked me hitting my thigh and I fell down to the ground, then he used his two knees on top of my thigh x x x x

Q. When you were able to lie down and Crisanto Baculio was already on top of you, what happened next?

A. He inserted his penis inside my vagina x x x x Then he was on the push and pull movement xxx

Q. After that, what happened next?

A. He brought me back to our house and he told Ricardo Sabellina 'Commander, she did not squeal x x x x'

Q. After that, what happened next?

A. Ricardo Sabellina brought me to the same place where Crisanto Baculio had brought me and he told me to remove my panty x x x x He told me to remove my panty while he was removing his trousers and he told me to lie down and he inserted his penis inside my vagina and made a push and pull movement.

Q. What did you do at that time?

A. I just cried. I could not do anything. He warned me not to cry because if I do (sic) so, he would stab me with his knife he was holding.

Q. Was he able to have a sexual intercourse with you?

A. Yes, sir[8] (Underscoring supplied).

As clearly demonstrated above, Evangeline testified in a direct and straightforward manner that when she was raped first by appellant Baculio, the latter had his gun with which he threatened her and when appellant Sabellina later took his turn in raping her, he threatened her with a knife. If there were other matters that Evangeline might have forgotten to include in her narration, it is worthy to note that a rape victim is not and cannot be expected to keep an accurate account of her traumatic experience.[9]

The defense argues that the failure of Evangeline to cry and resist the advances of appellants weakens her claim that she was raped. We cannot accept this proposition. Force or violence and intimidation required in rape cases are relative. When applied, force need not be overpowering or irresistible.[10] Given the circumstances under which Evangeline found herself, her inability to shout or offer tenacious resistance did not mean she willingly submitted to the sexual onslaught. This Court has repeatedly ruled that intimidation includes the moral kind, such as the fear caused by threatening the girl with a pistol or knife.[11] Rape was committed when intimidation was used on the victim and the latter submitted against her will because of fear for her life or personal safety.[12]

In their second and third assigned errors, appellants claim that they have not been categorically identified as the persons who raped Evangeline because she and her mother even admitted that at the time assailants wore masks.

We are convinced, as the trial court was, that Evangeline and her mother positively recognized both accused as the rapists. Referring to her affidavit on direct examination, Evangeline testified that she saw two persons wearing masks, one was carrying a gun and the other a stainless knife that was pointed at them. She asserted that she recognized their voices as well as their sizes and they were Ricardo Sabellina and Crisanto Baculio. She said that they even hit her mother.[13] Specifically, Evangeline explained that she recognized the voices of Sabellina and Baculio because sometimes they would meet each other on the way and sometimes "on a drinking spree." [14]

Evangeline's mother, Natividad Sabellina, likewise positively identified the appellants -

Q. In your affidavit, you stated that two men, the accused, entered your house with masks?

A. Yes, sir.

Q. Considering that circumstance, will you please tell us if you recognized them to be the accused in this case?

A. I recognized them.

Q. Speaking of Crisanto Baculio, how did you recognize him when he was masked?

A. I recognized them after they made sexual intercourse with my daughter because they took off their masks.

Q. You mean they took off their masks after the accused made their sexual intercourse?

A. Yes sir, after they were through with my daughter, they conducted my daughter to our house.[15]

As the court a quo found, the victim's account was given in a clear manner without any indication that the same was motivated by any ill feeling, and that her testimony was buttressed by the corroborative testimony of her mother and the findings in the medical report. The contention of the defense that the rape charge was fabricated by Evangeline's mother because of hatred for appellants is completely baseless. It is inconceivable that a mother would draw her young daughter into a rape scam with all its attendant scandal and humiliation just because of a supposed feud.[16] No mother in her right mind could possibly wish to stamp her child falsely with the stigma that follows a heinous crime that is rape.[17]

The affirmance of the conviction for rape of accused-appellants is thus inescapable. Not only that. They should in fact be ordered each to indemnify the complaining witness in the increased amount of P50,000.00 instead of P12,000.00, or a total of P100,000.00 for both accused.

Under prevailing jurisprudence, the accused in rape cases is normally sentenced to pay the victim P30,000.00 for moral damages. But under certain circumstances, this Court has awarded moral damages of P50,000.00 such as in rape of young girls with ages ranging from thirteen (13) to nineteen (19) years.[18] Accordingly, considering that Evangeline Sabellina was only thirteen (13) years old when she was helplessly raped in succession by the two accused-appellants and taking into account the immeasurable havoc it can bring to her youthful feminine psyche, the Court deems it fair and just that she be awarded P50,000.00 as moral damages to be paid by each appellant.

WHEREFORE, the conviction for rape by the court a quo of accused-appellants RICARDO SABELLINA and CRISANTO BACULIO and the imposition upon each of them of a prison term of reclusion perpetua is AFFIRMED. However, the award for moral damages to be paid by each accused-appellant to complaining witness EVANGELINE SABELLINA is increased to P50,000.00, or a total of P100,000.00 for both, plus costs.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Regional Trial Court, Br. 19; Cagayan de Oro City, decision penned by Judge Anthony E. Santos, Rollo, pp. 19-29.

[2] Brief for Accused-Appellants, pp. 21-36.

[3] *Id.*, pp. 25-26.

[4] *People v. Eduardo de la Cruz*, G.R. No. 108180, 8 February 1994.

[5] *Ibid.*

[6] *People v. Arnan*, G.R. No. 72608, 30 June 1993, 224 SCRA 37.

[7] *People v. Ocampo*, G.R. Nos. 90247-49, 13 February 1992, 206 SCRA 223.

[8] TSN, 6 April 1989, pp. 70-72.

[9] *People v. Dabon*, G.R. No. 102004, 16 December 1992, 216 SCRA 656.

[10] *People v. Alvarez*, G.R. No. 73071, 11 September 1992, 213 SCRA 722, *People v. Tayag*, G.R. No. 105803, 12 October 1993, 227 SCRA 169.

[11] *People v. Mabunga*, G.R. No. 96441, 13 November 1992, 215 SCRA 694.

[12] *People v. Olivar*, G.R. No. 101577, 13 November 1992, 215 SCRA 759.

[13] TSN, 15 May 1989, p. 18.

[14] *Id.*, p. 19.

[15] *Id.*, p. 11.

[16] *People v. Raptus*, G.R. Nos. 92169-70, 19 June 1991, 198 SCRA 425.

[17] *People v. Rio*, G.R. No. 90294, 24 September 1991, 201 SCRA 702.

[18] *People v. Joya*, G.R. No. 79090, 1 October 1993, 227 SCRA 9.

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