

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FERNANDO CABODAC Y ORAS ALIAS "BUBOY SERRANO," ACCUSED-APPELLANT.

G.R. Nos. 93929-31. May 08, 1992

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 156, Pasig, Metro Manila,[1] which (a) found the accused, Fernando Cabodac alias "Buboy Serrano" guilty of statutory rape on three [3] counts with the generic aggravating circumstance of dwelling; (b) sentenced him to reclusion perpetua in each of the three (3) criminal charges against him, x x x with all the accessory penalties; and (c) ordered him to indemnify the 8-year-old victim, Regina de la Peña, through her mother, Corazon Ocampo, in the amount of THIRTY THOUSAND PESOS (P30,000.00) in each case, in compliance with the mandate of Articles 100, 104(3) and 107 of the Revised Penal Code; and (d) to pay the costs.

The three (3) separate Informations for Rape, "upon sworn complaint originally filed by the offended party" identically charged that the accused herein, with lewd design and by means of force and intimidation, had carnal knowledge with one Regina de la Peña, a girl below twelve (12) years old, against her will and without her consent 1) "in or about the month of February 1989," (Crim. Case No. 77768), 2) "on or about the 27th day of February 1989" (Crim. Case No. 77767, and 3) "on or about the 24th day of April 1989" (Crim. Case No. 77766).

Because of the accused's refusal to enter a plea upon his arraignment on 25 August 1989, the Trial Court ordered that pleas of "not guilty" be entered for him in all the three (3) cases.

After appropriate proceedings, the Trial Court meted out judgments of conviction on the basis of the prosecution evidence consisting of the testimonies of the rape victim, 8-year-old Regina, her mother Corazon Ocampo, the Police Investigator, and the Medico-Legal Officer of the PC/INP Crime Laboratory Services, Camp Crame, Quezon City, who presented the following capsulization:

Corazon Ocampo, the victim's mother was in the business of buying merchandise in Manila and thereafter selling them (TSN, 24 November 1989, pp. 9-10). On 2 May 1989, as she was coming home, her daughter Regina, who was crying, disclosed to her (nagsumbong) that the accused, their neighbor, had been to their house (at Parang, Marikina) earlier that day and had touched her private part. The mother was also able to elicit from Regina that the accused had raped her several times - in February, March and April, 1989. Forthwith, the mother accompanied her daughter to the Marikina Police Station to report the sexual assaults committed by the accused against her daughter. They were investigated by Pfc. Jota who took down their sworn statements "in question and answer form", after which he instructed the mother to have her daughter examined by the Medico-Legal Officer at Camp Crame, writing the latter a referral letter for the purpose (TSN, 24 November 1989, p. 6; TSN, 14 November 1989, pp. 3-4; Salaysay of Corazon Ocampo, Exh. A; and Salaysay of Regina dela Pena, Exh. B).

On 3 May 1989, Dr. Emmanuel L. Aranas, conducted the physical examination on Regina. He found a "shallow,

healing laceration at 3:00 o'clock, and deep healed lacerations at 7:00 and 9:00 o'clock" in Regina's hymen (Medico Legal Report No. 0885-89, Exh. E, p. 100, Original Record). He then concluded that Regina is no longer a virgin; that said lacerations were not self-inflicted but were caused by a hard object like a male organ; that it was "very probable" that these lacerations could have been sustained "on the 24th day of April 1989 and any where in February 1989" (TSN, 13 December 1989, pp. 3-5).

In open Court, Regina positively identified the accused as the person who did "bad things" to her on several occasions "in the morning, noontime, and in the afternoon." She recounted how, in their home, the accused had first pulled her inside the toilet, then kissed her, undressed her, and kissed her private part. Thereafter, the accused made her hold and insert his private part inside her mouth; made to lie down on a bed in the room, and finally satisfied his carnal desire. When these acts were done to her on several occasions, she and her baby sister, Bianca, were alone in the house, their mother having been away (TSN, 8 January 1990, pp. 4-5).

In his defense, the 18-year-old accused relied on denial and alibi. He averred that on the dates mentioned by Regina, he was working as a mason in a construction project of Fernando C. Serrano in Ugong, Pasig. He submitted in evidence a time record (Exhs. 2, 2-A, p. 150, Rollo) signed by the timekeeper and by Serrano purportedly showing that on 27 February 1989, he was at his place of work. Additionally, he attributed ulterior motives to the mother of Regina in filing charges against him contending that she was mad at him because of his persistent demand for the payment of his unpaid wages for the services he rendered in the construction of her house (TSN, 16 March 1990, p. 3). The Trial Court rejected the defenses proffered and, as heretofore stated, convicted the accused.

In his bid for reversal, the accused impugns the guilty verdict, dwells on alleged inconsistencies in Regina's statements, and stresses the lack of jurisdiction of the Trial Court due to the absence of the required complaint by the offended party.

Following precedents, guiding us in this appeal are the following settled principles: 1) an accusation for rape can be made with facility; it is difficult for the prosecution to prove it, but it is more difficult for the accused, though innocent, to disprove; 2) 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 3) 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 v. Quintal, L-49656, 25 November 1983, 125 SCRA 1983).

Basically, the accused assails Regina's credibility not only on account of her youth but also because of alleged inconsistencies in her testimony "that negate the commission of the offense."

We reject these submissions. Despite her tender age, Regina proved herself "fully competent to testify" as observed by the Trial Court. She was unwavering in her declarations that the accused had sexually abused her. Her account of the incidents, related with candor and sincerity, is clear and convincing. She testified:

"Q. Now Gina, you pointed to Cabodac. Has this Cabodac done something bad or good to you?

"A. Bad, sir.

"Q. What is that bad thing that he did to you?

"A. He held my dress and pulled me in a toilet. Then, he kissed me.

"Q. What else did he do to you?

"A. He undressed me, sir.

"Q. After undressing you, what did he do? Don't be ashamed, Gina.

"A. He kissed my private part. Then he let me put his private part into my mouth.

"Q. What is that private part that he asked you to put in your mouth? Do you know that private part?

"A. No, sir. He put his private part into my mouth.

"Q. What else? You said you were kissed, you were undressed and his private part was inserted into your mouth, what else did he ask you to do?

"A. I was asked to lie down on a bed.

"Q. And after letting you lie down on a bed, what else did he do?

"A. He inserted his penis into my vagina, sir.

FISCAL:

May we request that those words be quoted?

INTERPRETER:

Pinasok niya ang titi niya sa puki ko.

"Q. Where is this bed that you are talking?

"A. Inside our room, sir.

"Q. You mean in your room in your house?

"A. Yes, sir.

x x x x x x x x

"Q. You mean to tell us, Gina, the bed on which you were asked to lie down then he inserted his penis into your vagina that happened in your house in Parang, Marikina?

"A. Yes, sir.

"Q. Wait Gina, can you still remember if this thing done to you by Cabodac, was it in the morning, noontime or in the evening?

"A. In the morning, in the afternoon and noontime, sir.

"Q. Three times? In the morning, noontime and in the afternoon?

"A. Yes, sir.

"Q. These three times that he inserted his private parts into your private part, were they done in the same day or different days?

"A. On the same day, sir.

"Q. Where was your mother at that time?

"A. She left the house, sir.

"Q. Who were left inside your house?

"A. Only the two of us, sir. My sister and I.

"Q. What is the name of your sister?

"A. Bianca, sir.

"Q. Do you know how old is Bianca, your sister? Is she younger than you?

"A. She is still a baby, sir.

x x x x x x x x

"Q. This accused, look at him. Before the incident of that inserting of his penis into your private part, do you already know him?

"A. Yes, sir.

"Q. How did you know him? Where does he live?

"A. Near our house.

"Q. Is he a neighbor?

"A. Yes, sir.

"Q. Was that the only day that he inserted his penis into your vagina when he came to your house? Was that the only day that he went to your house?

"A. He has been coming to our house, sir.

x x x x x x x x

"Q. Do you know how to count? Do you know what month (sic) now?

"A. No, sir. I do not know.

"Q. But you can still recall the incident when the accused inserted his penis into your penis (should be vagina)? Do you know the month, the year?

"A. For quite a time, sir.

"Q. Do you know what month is it?

"A. No, sir. That was when my mother was having construction at the back of their house.

"Q. You mean, the accused was working in that construction?

"A. Yes, sir.

"Q. When was that? Was that before or after that incident when he inserted his penis into your vagina?

"A. At the start of the working of the construction, sir.

"Q. Are you tired already?

"A. Not yet, sir.

"Q. Now, did the accused tell you anything after inserting his penis into your private part?

"A. Yes, sir. He told me not to tell my mother because my mother will weep (should be whip) me.

"Q. Did you tell it at once to your mother?

"A. No, sir. Because I was afraid.

"Q. At the time when the accused inserted his penis within your vagina, did you feel something?

"A. Yes, sir.

"Q. What did you feel?

"A. It was painful, sir.

x x x x x x x x

"Q. Do you know if your mother went to the police station to file charges?

"A. Yes, sir.

"Q. When you went to the police station, do you recall if you signed any document in front of the police?

"A. The police signed, sir.

"Q. How about you, did you sign?

"A. Only my name, sir.

"Q. Were you asked by the policeman?

"A. Yes, sir.

"Q. Did you answer?

"A. Yes, sir.

"Q. About the incident that happened to you?

"A. Yes, sir." (TSN, 8 January 1990, pp. 4-7).

The foregoing testimony of 8-year-old Regina is free from any self-contradiction. She recalled with sufficient clarity and related in simple detail (1) the manner the accused had criminally deflowered her three [3] times; (2) her positive identification of the accused, who is their neighbor, as the one who had sexually abused her; and (3) her explanation that she failed to immediately report the matter to her mother because the accused had told her not to, lest her own mother whip her. While she could not give the exact month and the year her defloration happened, she was firm in her stand that the accused had raped her "for quite a time," "in the morning, noontime and in the afternoon." Her simple answers exude candor and sincerity, discounting the possibility that she was tutored or rehearsed before she took the witness stand. As this Court had occasion to rule in *People v. Baylon* (L-35785, 29 May 1974, 57 SCRA 114), where the victims are of tender years, "there is a marked receptivity on its part to lend credence to their version of what transpired," a matter that is not to be wondered at, since the State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority are not yet able to fully protect themselves.

In an effort to create reasonable doubt, the defense contends that the dates stated in the Informations were supplied by the prosecutor and not by the complainant who could not state the month and year when the rapes were committed (Appellant's Brief, p. 7).

The records disclose, however, that the prosecutor himself conducted the preliminary investigation. In the course thereof he was able to fix the approximate dates of the rapes complained of, recited in the Informations, namely, 24 April 1989, 27 February 1989, and "in or about February, 1989." These dates related more or less to the period

that the mother was having their house constructed at the back of the accused's house. The said dates do not at all contradict Regina's testimony that the rapes were committed "for quite a time." They are substantially in accord with the approximation of the dates testified to by the medico-legal expert, Dr. Aranas, as to when the rapes were committed.

It should be recalled that upon physical examination conducted on 3 May 1989, Dr. Aranas found two types of lacerations on the hymen: 1) the deep-healed lacerations at 7 and 9 o'clock; and 2) the shallow, healing laceration at 3 o'clock. This expert witness testified that the healing laceration indicates trauma on the area about four (4) days before the physical examination, while the deep-healed lacerations indicate trauma on the area about one (1) week or more before the physical examination. From these findings, Dr. Aranas concluded that it was "very probable" that the healed lacerations were sustained anytime in February 1989, and the healing laceration was sustained on the 24th of April 1989 (TSN, 13 December 1989, pp. 4-5). He explained during the cross examination that the 4-day healing period he mentioned in the direct examination was the normal period, but that healing can be prolonged, such that a healing period of up to ten (10) days is still to be considered within the normal. Hence, his conclusion that the healing laceration could have also been sustained on the 24th day of April 1989 (TSN, 13 December 1989, p. 8). It follows then that the commission of the subject rapes, as determined by Dr. Aranas in his expert opinion, is well within the dates stated in the three (3) Informations.

It should be underscored at this point that the gravamen of the offense of statutory rape, as provided in Article 335(3), of the Revised Penal Code, is the carnal knowledge of a woman below 12 years old (*People v. Raptus*, G.R. Nos. 92169-70, 19 June 1991, 148 SCRA 425). The time or place of the commission of the offense is not an essential element thereof. Conviction may be had on proof of the commission of the crime provided it appears that the specific crime charged was, in fact, committed prior to the date of the filing of the Complaint or Information, within the period of the statute of limitations, and within the jurisdiction of the Court (*People v. Puedan*, G.R. No. 92586, 26 April 1991, 196 SCRA 388). Thus, we held in *People vs. Borromeo* (L-62737, 29 June 1983, 123 SCRA 253): "the phrase 'on or about' employed in the information does not require the prosecution to prove any precise date but may prove any date which is not so remote to surprise and prejudice the defendant."

It may be that Regina testified that she was raped on "the same day." We consider this a slip-of-the-tongue on the part of an innocent 8-year-old. Not only is it inconsistent with her declaration that the "things" were done to her for "quite a time" (TSN, 8 January 1989, p. 44) but more so because of the medical findings that there were both deep-healed lacerations and a healing laceration, which could not have been possibly inflicted on her young body in one day.

We find, however, that the third Information, which charges that the accused committed the offense "in or about the month of February 1989" (Crim. Case No. 77768), is too vague to be a basis of conviction beyond reasonable doubt. All that the medico-legal officer testified to was that the offense was committed any time in February 1989. There is no indication that two offenses were committed in February, 1989. It is only the rape charged to have been committed on 27 February 1989, therefore, that can be deemed adequately proven. Thus, the accused should be convicted of Rape only on two (2) counts, namely, that committed on 27 February 1989 and on 24 April 1989.

On the second issue brought before us; the defense argues that the Trial Court erred in assuming jurisdiction over these cases on the basis of Informations filed by the prosecutor without the complaint of the offended party. This contention suffers from inaccuracy.

It is evident that the prosecution for Rape was initiated by the offended party herself with the assistance of her mother. They both complained to the Marikina Police that the accused had sexually abused Regina three (3) times. Pfc. Jota of the Marikina police took down their separate sworn written statements "in question and answer

form" (Exhs. A and B). The same sworn statements were submitted to the prosecutor who prepared the Informations after conducting an investigation of his own. Thus the opening paragraphs of each of the Informations specifically state:

"The undersigned 3rd Assistant Fiscal upon sworn complaint originally filed by the offended party, accuses FERNANDO CABODAC y ORAS alias "BUBOY SERRANO of the Crime of Rape, committed as follows:" (pp. 7, 8, and 9, Rollo).

Moreover, the enunciated doctrine is that it is not the complaint of the offended party in Rape cases and the other private offenses enumerated in Article 344 of the Revised Penal Code which confers jurisdiction on the Court. The complaint required by said Article is merely a condition precedent to the exercise by the proper authorities of the power to prosecute the guilty parties. It is the Judiciary Law that vests jurisdiction on the Courts (*People v. Bugtong*, G.R. No. 75853, 31 January 1989, 169 SCRA 797) citing *People v. Tañada* (L-32215, 17 October 1988, 166 SCRA 360).

Premised on all the foregoing considerations, we find that the accused had, beyond reasonable doubt, carnal knowledge of an eight-year-old girl thereby making him guilty of Rape, as charged, but only on two (2) counts.

WHEREFORE, 1) in Criminal Cases Nos. 77766 and 77767, the judgment of conviction for statutory rape with the aggravating circumstance of dwelling, is hereby AFFIRMED in toto. In Criminal Case No. 77768, the judgment is SET ASIDE and the accused is hereby ACQUITTED on reasonable doubt.

With costs against the accused, Fernando Cabodac y Oras alias "Buboy Serrano."

SO ORDERED.

Paras, Padilla, Regalado, and Nocon, JJ., concur.

[1] Judge Martin S. Villarama, Jr., presiding.

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