

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NECEMIO JOAQUIN Y GAMBOA, JR. ACCUSED-APPELLANT.

G.R. Nos. 98007-08. August 05, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The appellant was charged with rape in four separate cases that were tried jointly. The first two cases were dismissed for lack of evidence but he was convicted in the other two. He maintains he should have been acquitted in all the four cases.

The complaining witness was Fairy Jane Bunag, who was only ten years old at the time of the alleged incidents. Necemio Joaquin is her uncle, being her mother's brother. In the cases now on appeal,[1] the girl claims he raped her inside her house in Malabon, Metro Manila, on November 8 and 10, 1988.

According to her, the rapes were committed in virtually identical circumstances. On both occasions, Necemio entered her room at about 10 o'clock in the evening when she and her younger sister Joanna were asleep in a double-deck bed. Necemio lifted Joanna to the upper bunk to get her out of the way. Then he sidled into the lower deck to lie with the complainant.[2]

Fairy Jane says he fondled her and kissed her breasts and stomach and then raped her. He stifled her scream of pain by covering her mouth with his hand as he penetrated her. Later, he threatened to kill her if she should report the incident.[3]

Her parents were out of the house on both occasions. Her mother Josefina was working on the night shift as a supervising nurse at the FEU hospital. Her father Florentino was a salesman and usually came home at eleven o'clock in the evening. Necemio was living with them at the time.

Florentino testified that he learned of the incidents from their housemaid, Raquel Delleva, on November 16, 1988, on their way home after taking Josefina to the hospital. Fairy Jane tearfully confirmed the report when he confronted her. He immediately returned to the hospital to inform his wife, who asked him to bring Fairy Jane to her at once. From the hospital, the three of them proceeded to the Tugatog Police Substation in Malabon, Metro Manila, to file a complaint against Necemio.[4]

At their request, the investigation was conducted in their house instead of the police station to keep the case as quiet as possible.[5] Sworn statements were taken from Fairy Jane,[6] Josefina Bunag,[7] and the two housemaids, Raquel Delleva[8] and Cristina Aguilar.[9] That same day, Fairy Jane underwent medical examination at the PC Crime Laboratory and was found to be no longer a virgin although there were no traces of spermatozoa in her vagina.[10] On November 22, 1988, Necemio himself was investigated by the police, also in the Bunag house.

Fairy Jane's parents testified on their reaction and the steps they took after learning of the incidents. Cristina Aguilar said she saw Necemio and Fairy Jane lying under a blanket with only their heads showing;[11] on another

occasion she chanced upon Necemio in a kneeling position while kissing Fairy Jane in the stomach.[12] Raquel Delleva confirmed the kissing incident.[13] Lt. Col. Desiderio A. Moraleda of the PCCL, who examined Fairy Jane, said that there were "no external signs of recent application of any form of trauma" on the complainant. On cross-examination, he said that her loss of virginity could most likely have been caused by the insertion of a penis.[14]

For his part, Necemio invoked the defense of alibi. He claimed that on November 7, 1988, he went to Antipolo to attend the birthday party of the son of a friend of his, Conrado Arias, and returned to Malabon only in the early afternoon of November 9, 1988. In the morning of November 10, 1988, he accompanied his sister Nancy Joaquin to the British Embassy and, after lunch, he proceeded to Antipolo, returning to Malabon only at 11 o'clock in the evening.[15] He was corroborated by his sisters Myrna Joaquin[16] and Judith Joaquin,[17] both residing in Antipolo. Conrado Arias was presented on sur-rebuttal, also for corroboration.[18]

Judge Eufrocinio S. de la Merced of the Regional Trial Court of Malabon, Branch 169, rejected Necemio's alibi and rendered judgment disposing as follows:

WHEREFORE, the Court finds the accused, NECEMIO JOAQUIN Y GAMBOA, guilty beyond reasonable doubt in both Criminal Case Nos. 7135-MN and 7136-MN, respectively, and is hereby sentenced to suffer a penalty of RECLUSION PERPETUA in each case and with all the accessory penalties provided for by law and to pay the cost.

In Criminal Case No. 7133-MN and Criminal Case No. 7134-MN, both are hereby dismissed with cost de oficio for insufficiency of evidence.

SO ORDERED.

The strategy of the present appeal is to impugn the testimonies of the prosecution witnesses by casting doubt on their motives and questioning their credibility.

In the case of Fairy Jane, the defense wonders why it took her all of six days before she reported the alleged rapes to her parents. It also presented her school teacher, Vangie Munar, who testified that the girl acted normally in school during the period of the alleged rapes and in fact passed the final examinations at the top ten of her class.[19] These circumstances, it is argued, belied the ordeal she was supposed to have been undergoing then.

The defense also contends that the supposed rapes are unbelievable because her two aunts were in the house at the time, besides the two maids, and the house was only a stone's throw from the police substation. Moreover, the medical examination showed only "minor lacerations" in the girl's vagina.

The conduct of her parents was no less inexplicable to the defense in light of the claimed outrage to their child. They were apparently unmoved by it. They allowed Necemio to remain in their house even after their discovery of his offense.[20] On November 21, 1988, only five days after Fairy Jane revealed the rape, Florentino and Necemio even attended Judith's birthday party together as if everything was all right.[21] This was also unnatural.

Regarding the two housemaids, the defense suggests that they testified for the prosecution out of resentment for Necemio, who had often scolded Cristina to the displeasure of Raquel. The direct accusation is made that the two are lesbian lovers who have conspired to take revenge on Necemio by fabricating their story against him.[22]

The defense also stresses the quarrels of the Joaquin siblings over the management of a fishpond in Pangasinan and focuses on the resentment of Josefina toward Necemio for siding with their Kuya Jorge. There is testimony of violence among them because of the controversy. The defense theorizes that this was the principal reason of the Bunag spouses for the filing of the rape charge against Necemio. As the appellant's brief put it, this "was used by

them as leverage in order to pressure appellant and his other brothers and sisters to cease and desist from interfering in a prawn pond in the province." [23]

The theory is absurd. If anything, it demonstrates the desperation of the defense. The appellant would have the Court believe that for control of the administration of the fishpond, which the Joaquin family does not even own, the parents of Fairy Jane were willing to: a) sully the innocence of their ten-year old daughter by brutalizing the facts of sex in her young mind; b) corrupt her integrity by making her testify falsely that she had been raped; c) inflict on her the stigma of such a disclosure and prejudice her chance of a happy marriage because of the blot upon her chastity; d) subject her to the humiliation of a medical examination of her genitals and embarrass her in the eyes of her classmates and friends; and e) impair the future and cause the imprisonment for life of Josefina's own brother. The Court believes that all this was far too high a price to pay for the alleged motives of the complainant's parents.

We do not agree either that the complainant's testimony was "weak and unconvincing," in the words of the defense. On the contrary, we find with the trial court that it was "given in a sincere and straightforward manner," as the record clearly discloses. The defense decries her testimony as "reference testimony" because the private prosecutor merely referred to portions of her sworn statement and asked her to affirm them. The transcript of stenographic notes is quoted at length to prove this point. The Court makes the wry observation that nowhere does it appear therein that the defense counsel ever raised any objection to this kind of questioning.

The fact that the Bunag house was only within walking distance of the police substation does not necessarily mean that the rapes could not have been committed. The house was not even under surveillance nor could the police have known what was happening inside it, or in any other house within the area for that matter. We have also held that rape may be committed even if there are other persons in the house at the time as those moved by animal lust have apparently not been deterred by this situation and have somehow succeeded in carrying out their plans without immediate detection. [24]

Fairy Jane's delay of only six days in reporting the rapes should not be taken against her, given her age and the death threat hanging over her head. Ten is a vulnerable age. It is so easy to frighten a girl that young. Her silence was not a badge of perjury; we should in fact feel with her the travail she was suffering as she kept that shameful secret to herself and ached for her mother's sympathy and assistance. If she acted perfectly normal during that period, it was because she wanted to push the outrage from her mind by attending assiduously to her schooling, which, in our view, explains her high performance in the examinations.

The complainant's age has not been questioned. Where rape is committed on a child less than 12 years old, it is not necessary to prove force or intimidation upon her, [25] (although both were present in the case at bar).

The conduct of her parents is understandable to the Court. It is not correct to say that they were unmoved by the rapes, for both of them testified on how they felt on learning of the ravishment of their daughter by her own uncle. Florentino immediately went back to the hospital to inform his wife, who became agitated and asked him to bring Fairy Jane to her right away. That same morning they reported the sexual attacks on their daughter to the police.

If they did not drive Necemio out of their house right away, it was because they were not yet certain of the steps they should finally take, considering the delicate nature of the problem they were facing. The fact that Florentino treated Necemio as if nothing had happened did not mean that the rapes had not been committed. At most it would indicate that Florentino had not yet made a definite decision on what to do or at worse that he was not strong enough or brave enough to confront his daughter's ravisher. In either case, his conduct would not disprove the charges against Necemio.

To impugn the credibility of the two housemaids, the defense makes a serious charge that it has not even attempted to substantiate. Counsel has no license to vilify in the guise of arguments. Lesbianism is a malicious accusation that should not be made without proof. The defense has not by its unsupported charges destroyed the credibility of the two housemaids. In any event, the Court feels that even without their testimonies, the crimes of Necemio have been sufficiently established.

It is the view of the Court that the testimony of the complainant herself, as supported by the medical evidence of her non-virgin-state, is sufficient to sustain Necemio's conviction. Fairy Jane could not have been mistaken about the identity of her 24-year old uncle who was living with her family when he violated her. The medical report that she was no longer a virgin and was found with deep healed lacerations in her vagina, although there was no more spermatozoa there, was consistent with her statement that the rapes occurred one week earlier.

If there is anything unnatural in this case, it is the conduct of Necemio himself, who defiled his own niece in the house of his sister and her husband who trusted him and assumed, not unreasonably, that he would protect rather than prey upon their ten-year old daughter.

Human beings who engage in the unnatural relationship of incest descend to lower than the level of the beast. When that situation is forced, as in the case at bar, the miscreant sinks even below the amoral animal, which, when it mates with its kin, breaches no law or convention. The person who forces himself upon his own relative knows he is committing an enormous and un-human wrong that cannot even be described as animal perversion. If knowing this, he still chooses to satisfy his lust, he demonstrates a depravity that cannot even be imputed to the beast.

The Court expresses its sympathy for Fairy Jane, who lost her innocence at a time when she should still be playing childhood games with her friends. Womanhood was rudely thrust upon her and before she could enjoy the naive fantasies of youth. She is no longer pure at ten. Gone from her forever is the anticipation of a sweet surrender to a loved one in the secret rite of a deflowering.

Necemio Joaquin is justly punished for his despicable crime. He was only 24 when he intruded his lasciviousness upon his defenseless niece who was then still a guileless- child. He will have many years to ponder his sins, and to expiate them if he will, in the chastening confines of a prison cell.

WHEREFORE, the appeal is DISMISSED and the appealed judgment is AFFIRMED, with the modification that in addition to the penalty of reclusion perpetua for each of the two rapes, the appellant shall indemnify the complaining witness in the amount of P50,000.00. It is so ordered.

Griño-Aquino, Davide, Jr., Bellosillo, and Quason, JJ., concur.

[1] Criminal Case Nos. 7135-MN an 7136-MN

[2] TSN, January 31, 1989, pp. 3-6, 9.

[3] Ibid., p. 11.

[4] TSN, January 2, 1989, pp. 56-61.

[5] Ibid., pp. 45, 61; January 9, 1989, p. 12.

[6] Exhibit "C."

[7] Exhibit "D."

[8] Exhibit "F."

[9] Exhibit "E."

[10] Exhibit "A."

[11] TSN, January 10, 1989, p. 9.

[12] Ibid., p. 14.

[13] Id., pp. 43-44.

[14] TSN, February 22, 1989, p. 18.

[15] TSN, July 26, 1989, pp. 14-18; August 15, 1989, pp. 25-26.

[16] TSN, September 25, 1989, pp. 7-8; November 28, 1989, p. 11.

[17] TSN, March 20, 1990, p. 6.

[18] TSN, September 18, 1990, pp. 11-12.

[19] TSN, April 30, 1990, p. 15.

[20] TSN, January 2, 1989, p. 51, 82.

[21] TSN, March 20, 1990, pp. 13-14. The appellant's brief says they were also drinking beer and watching television together, citing pp. 13-14 of the transcript of stenographic notes of March 20, 1988. There is no such statement there. Atty. Carmelo S. Trinidad is warned that a similar misrepresentation in the future will be treated more severely by the Court.

[22] TSN, July 26, 1989, pp. 29-31.

[23] Appellant's Brief, p. 27.

[24] *People v. Delos Reyes*, 203 SCRA 707 (1991); *People v. Ramos*, 165 SCRA 400 (1988); *People v. Andaya*, 196 SCRA 660 (1991).

[25] *People v. Mayoral*, 203 SCRA 528 (1991).

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