

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PONCIANO SANCHEZ Y LABITAG, ACCUSED- APPELLANT.

G.R. Nos. 98402-04. November 16, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision rendered on August 1, 1990 by the Regional Trial Court, Branch 49, of Manila, finding accused-appellant guilty of three counts of statutory rape and sentencing him as follows:

WHEREFORE, judgment is hereby rendered in the following cases:

1. In "People versus Ponciano Sanchez." Criminal Case No. 90-82694, judgment is hereby rendered finding the Accused guilty beyond reasonable doubt of the crime of Rape defined in and penalized by Article 335 (3) of the Revised Penal Code and hereby sentences him to the penalty of RECLUSION PERPETUA, with all the accessory penalties of the law;
2. In "People versus Ponciano Sanchez." Criminal Case No. 90-82695, judgment is hereby rendered finding the Accused guilty beyond reasonable doubt of the crime of Rape defined in and penalized by Article 335 (3) of the Revised Penal Code and hereby metes on him the penalty of RECLUSION PERPETUA, with all the accessory penalties of the law;
3. In "People versus Ponciano Sanchez." Criminal Case No. 90-82696, the Court finds the Accused guilty beyond reasonable doubt of the crime of Rape defined in and penalized by Article 335 (3) of the Revised Penal Code and hereby metes on him the penalty of RECLUSION PERPETUA, with all the accessory penalties of the law.

The Accused is hereby condemned to pay to Gladys Magpayo the amount of P30,000.00 as moral damages. The period during which the Accused was detained during the pendency of these cases shall be credited to him in full provided that he agree in writing to abide by and comply strictly with the rules and regulations of the City Jail of Manila. With costs against the Accused.

Gladys V. Magpayo was a nine-year old girl, studying at the Holy Child Catholic School in Tondo, Manila. Her mother, Gloria Magpayo, was a manicurist. Her father was an overseas worker in Saudi Arabia. Gladys has a sister, Maritess, who at the time of the incident was 20 years old, and five brothers, of whom the youngest was then two years old. Gladys and her family lived in an apartment on 1115 Carmen Planas Street, Tondo, Manila.

In the evening of December 14, 1989 Gladys was left alone in their apartment, her mother and her younger brothers having gone to another apartment where her mother gave a manicure to a customer.[1] Her elder sister and brother were not in the house either. While Gladys was lying in bed, accused-appellant Ponciano Sanchez, 25 years old, entered her room. When she asked why he was there, accused-appellant grabbed her and covered her mouth. He then unzipped his pants, removed Gladys' shorts and underwear and succeeded in inserting his penis into Gladys' private part. With her mouth covered, Gladys was not able to scream.

After Ponciano Sanchez had left, Gladys did not tell anyone about the incident, afraid that her mother would get angry at her and hit her if she learned of it.[2] Gladys knew Ponciano as he was a helper of the owner of the apartment in which Gladys' family was living. Ponciano himself lived in a hut ("tarima") nearby, which the apartment owner, Macario de Guzman, used in the business of buying and selling watermelons and corn. Now and then Ponciano was asked to make repairs in the apartment of his employer.[3]

On December 21, 1989, while Gladys was again alone in their apartment watching TV, Ponciano Sanchez again forced her to have sexual intercourse with him. As before, Gladys did not report the incident because she was afraid of her mother.[4]

On January 2, 1990, while Gladys was inside the toilet disposing of her younger brother's waste, accused-appellant entered. He pinned her against the wall, unzipped his pants and in a half-kneeling position satisfied his sexual desire. Again, Gladys did not report the matter to anyone. But, on March 22, 1990, she was seen by her older sister Maritess slap accused-appellant. It appears that accused-appellant was calling Gladys, who could no longer control her anger. She was asked by her sister why she had slapped accused-appellant. It was then that she told her of her ordeal.

Maritess reported the matter to her mother Gloria. On the same day, Gloria took Gladys to the police station where Gladys executed a sworn affidavit, accusing Ponciano Sanchez of rape. Accused-appellant was later arrested and taken to the police station. He was identified by Gladys as her attacker.

The medico-legal report of Dr. Manuel Ceñido noted the absence of any laceration in the hymen.[5] In his direct examination, Dr. Manuel Ceñido explained that the absence of laceration or vaginal scars could be due to the fact that more than three months had passed from the time of the last intercourse. He said lacerations usually heal in 10 days.

COURT:

You examined the Private Complainant on March 22, 1990 or after the lapse of almost three months from the last alleged abuse. Assuming that there was a discolorization of the labia menora or majora, could it still be ascertained on your examination on March 22, 1990 considering the lapse of about 3 months?

WITNESS:

Of course cannot, Your Honor. [sic]

COURT:

Why, how much period of time this discolorization will subsist from the time of the infliction?

WITNESS:

It will be dependent on the degree of the discolorization, Your Honor.

COURT:

How much time then?

WITNESS:

Ten days, Your Honor.

COURT:

So that at the time of your examination it will disappear?

WITNESS:

Yes, because the period is three months, sir.[6]

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Dr. Ceñido explained that even if the hymen was intact, there could still have been penetration of the private organ.

FISCAL PERALTA:

In your findings, doctor, you stated here that the hymen of the girl at that time of your examination was circular in shape relatively thick and intact. What do you mean by that?

WITNESS:

That the victim is still a virgin, sir.

FISCAL PERALTA:

Doctor, could there be a penetration of the private organ of a girl without rupturing the hymen?

WITNESS:

Yes, the labia menora and majora, sir. [sic]

FISCAL PERALTA:

What will be the effect of the private organ if it touches or penetrates the labia menora and majora as far as the hymen of the girl is concerned?

WITNESS:

The hymen of the girl could still remain intact, sir.[7]

Accused-appellant denied the accusation against him. He claimed that the only time he went to the victim's apartment was on February 15, 1990, when he was asked by his employer, Macario de Guzman, to do some repairs. He denied having been to the victim's apartment on December 14 and 21, 1989 and January 2, 1990. He claimed that on December 21, 1989 he was in Batangas, having been sent there by Macario de Guzman to buy watermelon and corn for his employer for sale in Metro Manila, and that on January 2, 1990 he slept in the house of his nephew, a certain Bernardo Lopez, in Area D. Camarin, Caloocan City.[8] However, accused-appellant did not present either Macario de Guzman or Bernardo Lopez to corroborate his claim or anyone who could testify as to his whereabouts on those dates.

Accused-appellant claimed that he was falsely charged filed by Gladys' mother, Gloria, because he knew about Gloria's alleged illicit relation with Macario de Guzman.[9]

The trial court found the testimony of Gladys Magpayo credible and convicted Ponciano Sanchez. Hence, this appeal.

Accused-appellant capitalizes on the fact that the medico-legal report of Dr. Ceñido showed no laceration of the hymen. He contends that three incidents of penetration, if true, could not have failed to produce lacerations of the hymen.[10] He assails the trial court's rejection of his defense of alibi.

Courts have been guided by three well-established principles in the prosecution for the crime of rape. These principles are: (1) that an accusation for rape is easy to make, difficult to prove, and even more difficult to

disprove; (2) that in view of the intrinsic nature of the crime, where only two persons are usually involved, the testimony of the complainant must be scrutinized with utmost caution; and (3) that the evidence for the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.[11]

When an alleged victim of rape says that she was violated, she says in effect all that is necessary to show that rape has been inflicted on her and so long as her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[12] But in the case at bar, Gladys Magpayo did not only say she had been raped. She described in detail how she had been sexually abused by accused-appellant.

The trial court found her testimony to be "spontaneous, candid, straightforward . . . and bereft of artificialities," as it noted:

As Gladys Magpayo unraveled and recounted, ironically on cross-examination by counsel of the Accused, the gory and lurid details of the bestial and abominable assault on her by the Accused, copious tears of outrage and self-degradation streaked down her cheeks. The Court sensed the seething and smoldering anger in her as she uncontrollably cried and glowered at the Accused in the course of her testimony. Gladys Magpayo, at the tender age of nine (9) years, still in Grade II of Holy Child Catholic School, could not have contrived and concocted the details of her ordeal and the circumstances attendant thereto and narrated them in such a natural and sincere manner unless they were true. Indeed, the testimony of Gladys Magpayo bears the earmarks of truth throughout.

The findings of trial courts on questions of credibility of witnesses will not be disturbed on appeal unless there are substantial facts and circumstances which have been overlooked and which if properly considered, might affect the result of the case.[13] As we have said many times before, "it is axiomatic that the trial court's evaluation 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 witnesses on the stand and determine if they are telling the truth or not." [14]

Accused-appellant says that the trial court based its decision largely on the testimony of the complainant, a child, nine years of age, whose credibility and competence as a witness he questions. But the lone testimony of the victim in a prosecution for rape, if credible, is sufficient to sustain a verdict of conviction and the mere fact that the witness is of tender age will not suffice to disqualify her from taking the witness stand. Because of the very nature of the offense, oftentimes the only evidence that can be adduced to establish the guilt of the accused is the offended party's testimony.[15] On the other hand no woman especially one who is of tender age would concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished.[16]

In a case[17] similar to the one at bar, this Court held:

Briefly, appellant insists that the trial court erred in giving credence to the testimony of the 10 year old victim which he described as conflicting and improbable. Appellant claims that the credibility of Sharon Saing is suspect because her actions after the alleged sexual intercourse were not the "normal behavior of a girl whose virtue has been damaged." More specifically, he points out that Sharon testified that she went back to sleep although she had suffered excruciating pain the course of the sexual penetration and that, while Sharon testified that the appellant had forced her to submit to his sexual embraces four (4) times, she never advised her parents of such outrage although she had had opportunities to do so. Appellant stresses that it was only after he was discovered by Sharon's father asleep beside her in her bedroom on the fourth occasion that she finally informed her father that she had been violated by Montefalcon on three (3) previous occasions. Also telling, according to the appellant, is the fact that after the first alleged rape, she did not lock the door of her bedroom when she went to sleep on the succeeding nights.

The Court is not persuaded by these contentions. We have had occasion to state and reiterate that "different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response where one is confronted with a strange or startling or frightful experience." [People v. Raptus, 198 SCRA 425, 432 (1991); People v. Ronquillo, 184 SCRA 236, 244 (1990)]

Much is made of the absence of lacerations in the hymen. Accused-appellant argues that this negates allegations of penetration of the victim's private organ. This contention is untenable. As Dr. Manuel Ceñido, medico-legal officer of the Western Police District, explained, the vaginal scars or lacerations may have already healed when he examined the victim more than three months from the last penetration, as scars or lacerations usually heal in 10 days.[18]

But even if there had been no lacerations of the hymen this fact does not necessarily mean there was no rape. A broken hymen is not an essential element of rape.[19] The merest introduction of the male organ into the labia of the pudendum is sufficient.[20] The mere penetration of the penis by the entry thereof into the labia majora of the female organ, even without rupture of the hymen, suffices to warrant a conviction for rape.[21] Indeed that there was penetration in this case was the testimony of the complainant. She saw the accused-appellant's penis and thought it "big," and when it was inserted into her private part, she felt pains.[22] The pain could be nothing but the result of penile penetration, sufficient to constitute to rape.[23]

Accused-appellant claims that Gloria Magpayo filed the charges against him to prevent him from reporting her to her husband because of her alleged illicit relationship with Macario de Guzman. There is no proof, however, of accused-appellant's allegation. His testimony is vague and illogical, as the following portion of the transcript of stenographic notes shows:

FISCAL PERALTA:

You said these charges were filed against you because of your knowledge about the relationship between Macario and Gloria. How did you come to know their relationship?

WITNESS:

Because I saw it, sir.

FISCAL PERALTA:

Where do you usually see them?

WITNESS:

Sometimes inside of our working place, sir.

FISCAL PERALTA:

Where is your working place?

WITNESS:

In Carmen Planas, sir.

FISCAL PERALTA:

In the house of Macario?

WITNESS:

That is a house but they also use it as their place of work, sir.

FISCAL PERALTA:

And you saw them besides each other, that is why you said that they have relationship, is it not?

WITNESS:

Yes, sir.

FISCAL PERALTA:

You also mentioned that they have a child. How did you come to know that they have a child?

WITNESS:

Yes, but I could see what they were doing, sir. (sic)

COURT:

When did you begin seeing them together?

WITNESS:

Everytime that Macario leaves, they go with each other, sir.

COURT:

When was this?

WITNESS:

November 10, 1989, sir.

COURT:

So that was the first time that you saw them together, is it not?

WITNESS:

Yes, sir.

COURT:

So from November, 1989 to July 1990, barely only 9 months, they have already an 11 months old child?

WITNESS:

The child is still very young, sir.

COURT:

When was this child born anyway?

WITNESS:

October 12, 1989, your Honor.

COURT:

So, they were together for the first time on November 10, 1989, and yet, the child was born on October 12, 1989. The child was born even before October 12, 1989?

WITNESS:

Because I only saw them once, they got out very often, Your Honor.

COURT:

Proceed.

FISCAL PERALTA:

Did you see Gloria become pregnant?

WITNESS:

I saw her, sir.

FISCAL PERALTA:

When did you see her pregnant?

WITNESS:

February, 1990, sir.

FISCAL PERALTA:

Are you trying to say that Gloria gave birth to a child on October 12, 1989, and that she was still pregnant February, 1990?

WITNESS:

She had given birth already, sir.

x x x x x x x x

COURT:

At times when Macario and Gloria leave the house, what time was it?

WITNESS:

Sometimes about 7:00 P.M., sir.

COURT:

Where was the wife of Macario whenever they leave together?

WITNESS:

She was vending corn at the place of work, sir.

COURT:

And that place of work is in the house of Macario, is it not?

WITNESS:

Yes, sir.

COURT:

She saw Macario and Gloria leaving together from the house?

WITNESS:

Yes, sir.

COURT:

The wife did not complain?

WITNESS:

No, your Honor.

COURT:

By the way, the child of Gloria with Macario, is that a boy or a girl?

WITNESS:

It is a boy, sir.

COURT:

Does Gloria usually see the son of Macario with Gloria?

WITNESS:

No, the son was not shown to her, Your Honor.

COURT:

But it was shown to you, is it not?

WITNESS:

Yes, your Honor.

COURT:

Why is it that the child was not shown to the wife of Macario?

WITNESS:

Because they might quarrel with each other, sir.[24]

We agree with the trial court that the claim of the accused "is a mere prevarication and figment of the imagination of accused." [25]

Accused-appellant's claim that Gloria Magpayo merely concocted the charges against him because she was afraid accused-appellant would report her to her husband is contrary to a parent's natural instinct to protect her children from harm and ridicule. "It is unnatural for a parent to use her offspring as an engine of malice, especially if it will subject a daughter to embarrassment and even stigma." [26] No mother would stoop so low as to subject her daughter to the physical hardship and shame concomitant to a rape prosecution just to assuage her own hurt feeling. [27]

Finally, accused-appellant contends that the trial court erred in rejecting his defense of alibi. Alibi is inherently a weak defense because it is easy to fabricate and difficult to disprove it. It cannot prevail over the positive identification of the accused, especially if made by the victim. [28] For alibi to be believed, credible and tangible proof of physical impossibility for the accused to be at the scene of the crime is indispensable. Such proof must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime.

In this case, accused-appellant did not present any witness to substantiate his alibi. He claimed that on January 2, 1990 he slept in the house of his nephew, Bernardo Lopez, in Camarin, Caloocan City, but he never called him to testify in support of his claim. He also claimed that on December 21, 1989 he had gone to Batangas to buy watermelons for his employer, Macario de Guzman, but he never presented anyone to support his claim. Uncorroborated alibi, it has been held, must be disregarded.[29] Nor did accused-appellant show that it was physically impossible for him on the two occasions to be at the scene of the crime at the time of its commission.

Moreover, accused-appellant's alibi is full of inconsistencies as the following portion of his testimony shows:

ATTY. SAVELLANO:

By the way, where were you on January 2, 1990 in the evening?

WITNESS:

I was called by my nephew because I was supposed to sleep there, sir.

ATTY. SAVELLANO:

What is the name of your nephew?

WITNESS:

Bernardo Lopez, sir.

ATTY. SAVELLANO:

Where is the address?

WITNESS:

Area "D". Camarin, Caloocan City, sir.

x x x x x x x x

FISCAL PERALTA:

On January 2, 1990, where were you?

WITNESS:

I was in Batangas, sir.

x x x x x x x x

FISCAL PERALTA:

On direct examination you said that you slept in the house of your nephew at Area D, Camarin, Caloocan City on January 2, 1990. Now, on cross-examination you said that you were in Batangas. Which is which now?

x x x x x x x x

WITNESS:

In the house of my nephew, sir.

COURT:

That house of your nephew, where is it located?

WITNESS:

At Lakandula Street, Tondo, Manila, sir.

COURT:

What is the name of your nephew?

WITNESS:

Bernardo Lopez, sir.

COURT:

Proceed.

FISCAL PERALTA:

You said that the house of your nephew is in Area D, Caloocan City. When you were asked by the Court, the address that you gave is Lakandula Street, Tondo, Manila, which is which now?

WITNESS:

Because when that nephew of mine got married, they transferred residence at Lakandula Street, Tondo, Manila, sir.

FISCAL PERALTA:

So you did not sleep in Camarin, Caloocan, but you slept in Lakandula, Tondo, Manila, is it not?

WITNESS:

I slept in Area D, Caloocan City because that house is owned by my nephew, sir.

FISCAL PERALTA:

So you did not sleep in Lakandula?

WITNESS:

I slept also but it was noontime, sir.[30]

The award of moral damages for rape is proper as it is provided in Art. 2219 (3) of the Civil Code.[31] In accordance with prior cases, the accused-appellant should be made to pay P50,000.00, especially considering that the offended party was of a tender age at the time of the commission of the crime.[32]

WHEREFORE, the decision appealed from is **AFFIRMED**, with the modification that the award of moral damages to Gladys Magpayo is increased to P50,000.00.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.
Francisco, J., on leave.

[1] Testimony of Gladys V. Magpayo, TSN, pp. 3-4, May 29, 1990.

[2] TSN, May, 29, 1990, pp. 8-9.

[3] TSN, July 10, 1990, pp. 3-10.

[4] Testimony of Gladys V. Magpayo, pp. 5-6, May 29, 1990.

[5] "Hymen is circular in shape, relatively thick and intact.

Opinion: Consistent with a girl who is a virgin."

[6] TSN, June 5, 1990, p. 7.

[7] TSN, p. 4, June 5, 1990.

[8] TSN, p. 4, July 10, 1990.

[9] TSN, pp. 19-21, July 10, 1990.

[10] Appellants brief, p. 11.

[11] *People v. Tacipit*, 242 SCRA 241 (1995); *People v. Morre*, 217 SCRA 219 (1993); *People v. De Guia*, 185 SCRA 336 (1990).

[12] *United States v. Ramos*, 1 Phil. 81 (1901); *Anciro v. People*, 228 SCRA 629 (1993); *People v. Repollo*, 237 SCRA 476 (1994).

[13] *People v. Montefalcon*, 243 SCRA 617 (1995).

[14] *People v. Cura*, 240 SCRA 234 (1995); *People v. Matamorosa*, 231 SCRA 509 (1994); *People v. Dela Cruz*, 229 SCRA 754 (1994).

[15] *People v. Magallanes*, 218 SCRA 109 (1994).

[16] *Ibid.*

[17] *People v. Montefalcon*, *supra* note 13 at 623-624.

[18] TSN, pp. 6-7, June 5, 1990.

[19] *People v. Salinas*, 232 SCRA 274 (1994).

[20] *People v. De la Peña*, 233 SCRA 573 (1994); *People v. Ylarde*, 224 SCRA 405 (1993); *People v. Mongalino*, 182 SCRA 329 (1990).

[21] *People v. Rejano*, 237 SCRA 627 (1994); *People v. Cura*, 240 SCRA 234 (1995).

[22] TSN, May 20, 1990, pp. 3-8.

[23] *People v. Palicte*, *supra*.

[24] TSN, July 10, 1990, pp. 19-23.

[25] Trial Court's decision, p. 15.

[26] *People v. Ching*, 240 SCRA 267 (1995).

[27] *People v. Rejano*, 237 SCRA 627 (1994). *Accord*, *People v. Cura*, 240 SCRA 234 (1995).

[28] *People v. Felipe*, 191 SCRA 176 (1990). See also *People v. Gapasan*, 243 SCRA 53 (1995); *People v. Tañote*, 238 SCRA 443 (1994); *People v. Repollo*, 237 SCRA 476 (1994); *People v. Dela Cruz*, 217 SCRA 283 (1993); *People v. Eswan*, 186 SCRA 174 (1990).

[29] *People v. Gapasan*, 243 SCRA 53 (1995).

[30] TSN, July 10, 1990, pp. 16-19.

[31] *People v. Miranda*, 235 SCRA 202 (1994).

[32] *People v. Joya*, 227 SCRA 9 (1993); *People v. Sabellina*, 238 SCRA 492 (1994).

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