

EN BANC

[G. R. No. 145034-35, February 05, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PEDRO INTONG Y AGAPAY, APPELLANT.

DECISION

VITUG, J.:

For review is a decision^[1] of the Regional Trial Court of Calamba, Misamis Occidental, Branch 36, in Criminal Case No. 36-05 and Criminal Case No. 36-09, finding appellant Pedro Intong y Agapay guilty beyond reasonable doubt, on two counts, of the crime of rape. In each of these two cases, the trial court imposed on appellant the penalty of death and the payment of P75,000.00 civil indemnity and P50,000.00 moral damages to the victim and her parents.

In Crim. Case No. 36-05 for rape, the accusatory information read:

"That on or about the 23rd day of November, 1997, at or about 10:00 o'clock in the evening, in barangay Bunawan, municipality of Calamba, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, entered the bedroom in the dwelling of the offended party, and by means of force and intimidation, with the use of a hunting knife, did then and there willfully, unlawfully and feloniously have carnal knowledge of the offended party Genalyn Camporedondo, a 10-year-old girl who is the step granddaughter of said accused, without her consent and against her will.

"CONTRARY TO LAW, with the qualifying circumstance that the victim is under twelve (12) years of age and the offender is a stepgrandfather of the victim, and the use of a deadly weapon, and the aggravating circumstance that the offense was committed in the dwelling of the offended party."^[2]

In Crim. Case No. 36-09 for statutory rape, the accusation was to the following effect, viz:

"That on or about November 23, 1997, at about 10:00 o'clock in the evening, more or less, in the kitchen of their house, at barangay Bunawan, municipality of Calamba, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, and with the used (sic) of a hunting knife, with violence, force, and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with GENALYN CAMPOREDONDO, a minor 10 years old, without her consent and against her will.

"CONTRARY TO LAW, with the presence of the qualifying circumstance of minority and the aggravating circumstance of relationship the accused being the step-father of the mother of the victim."^[3]

Appellant pleaded not guilty to the charges. The trial ensued with the prosecution first presenting its evidence on, and the defense thereafter submitting its own version of, the incidents complained of.

Genalyn Camporedondo, the eldest child of the spouses Jimmy and Emma Camporedondo, was born on 5 July 1987. Along with her siblings named Gino, Raymond, Lenie and Roselle, Genalyn treated appellant with respect, he being the second husband of her grandmother, the mother of her own mother Emma. The Camporedondo family lived in an old and dilapidated house in Bunawan, Calamba, Misamis Occidental. Its roof was made of nipa shingles, with a portion made only of "cellophane." Its walls were matted bamboo slats. Two lamps lighted the dwelling at night.

After supper on the evening of 23 November 1997, Jimmy and Emma, accompanied by appellant, Andrew and Ronnie Intong, went to the benefit *disco* dance of the *barangay*, leaving their children sleeping at home. Appellant later decided not to proceed to the dance party and returned home.

It was raining, with the darkness of the night intermittently interrupted by flashes of lightning. About ten o'clock that night, Genalyn was awakened by difficulty in breathing and felt somebody mounting her. She recognized that person to be her step-grandfather when she saw his face by the lightning flashes and also by his voice as he urged her to respond to his kisses. Genalyn shouted for help and resisted the assault, in the process kicking her nine-year old brother Gino who then woke up. Gino was unable to help his sister. While on top of Genalyn, appellant, who was naked from waist down, inserted his penis into the vagina of Genalyn and did the push-and-pull movement. Soon thereafter, he inserted his fingers into her vagina. His lust apparently still unsated, he carried Genalyn to the kitchen where he laid her down the floor and then, again, inserted his penis into her vagina. After doing the push-and-pull movement, he, like before, inserted his fingers into her vagina. During the assault, Genalyn felt excruciating pain. She shouted for help but nobody responded. When it was over, appellant got hold of a *sanggot*, a scythe used in harvesting coconut, from the kitchen and threatened Genalyn and her siblings with death if they were to mention the incident to their parents. Appellant then left.

Jimmy and Emma arrived home at two o'clock in the morning. Gino promptly reported to the couple the sexual assaults committed by appellant against his sister. Expectedly taken aback, Jimmy immediately took the matter up with the *barangay tanod* of Bunawan. At daybreak, *barangay* officials brought Genalyn and her parents to the Calamba District Hospital. Dr. Jona C. Handumon, who examined her, found tenderness in Genalyn's left breast, erythema of the introitus, fresh laceration of the posterior fourchette, fresh abrasions on the 5, 6, 7 and 9 o'clock positions of the hymen, erythema, as well as abrasions of the posterior vaginal wall, a firm but tender cervix with bloody mucoid discharge and a strand of pubic hair. Dr. Handumon did not conduct a speculum examination. The findings, reflected in the medico-legal report, were attested to by Dr. Rodolfo L. Nazareno.^[4]

In his defense, the 52-year-old appellant interposed *alibi* and denial. A laborer and *tuba*-gatherer, appellant claimed that right after lunch on 23 November 1997, a Sunday, he drank Tanduay at the public market in the company of his wife, Antonina Remorosa, and the Camporedondo spouses. He was so drunk that Jimmy and Emma had to help him get home. On the morning of 24 November 1997, the *barangay* captain, a *barangay* tanod, and a member of the CAFGU arrested him. Appellant asserted that he could not have possibly raped Genalyn, whom he treated as his own granddaughter, and that, in any event, he was too drunk to commit the sexual abuse. He could not, however, think of an evil motive that could have led Jimmy and Emma to charge him with rape. His daughter by Antonina, Merlita Intong Aca, did claim that Jimmy and Emma harbored ill-feelings against appellant because the couple wanted to take over the tenancy of the land that appellant and his wife were tilling. Antonina corroborated Merlita's claim.

The trial court saw the case for the prosecution and convicted appellant; it concluded:

"WHEREFORE, premise considered, finding accused Pedro Intong guilty beyond reasonable doubt of having committed the crime of RAPE in CRIMINAL CASE NO. 36-05 as defined and penalized under Article 335 of the Revised Penal Code as amended by Article 266-A and 266-B of Republic Act 8353 in relation to R.A. 7610 with the attending (*sic*) or presence of three qualifying aggravating circumstances, namely: 1) that victim Genalyn Camporedondo is below 12 years old; 2) that the crime of rape was committed with the use of a deadly weapon; and 3) that the crime of rape was committed in the house or dwelling place of victim Genalyn Camporedondo, and likewise the presence of the generic aggravating circumstance that the crime of rape was committed in the presence of Gino Camporedondo, a brother of victim Genalyn Camporedondo, this is so because this aggravating circumstance was not alleged in the Information although it was proven, accused Pedro Intong is hereby sentenced to a penalty of DEATH. Pedro Intong is hereby directed to pay the amount of P75,000.00 as civil indemnity and the additional amount of P50,000.00 as moral damages to Genalyn Camporedondo and to her parents.

"In CRIMINAL CASE NO. 36-09, accused Pedro Intong is found guilty beyond reasonable doubt of having committed the crime of RAPE as defined and penalized under Article 335 of the Revised Penal Code as amended by Article 266-A and 266-B of Republic Act 8353 in relation to section 11 of R.A. 7659, with the presence of qualifying aggravating circumstances, namely: 1) that victim Genalyn Camporedondo is below 12 years old, and 2) that the crime of rape was committed with the use of a deadly weapon, and likewise also, with the presence of two generic aggravating circumstances, namely: 1) that the crime of rape was committed in the presence of the brother of the victim, Gino Camporedondo, and 2) that the crime of rape was committed in the house or dwelling place of victim Genalyn Camporedondo — these are considered only as generic aggravating circumstances for the same are not alleged in the Information although they were proven, accused Pedro Intong is hereby sentenced to a penalty of DEATH. Pedro Intong is hereby directed to pay to Genalyn Camporedondo and [her] parents the

amount of P75,000.00 as civil indemnity and the additional amount of P50,000.00 as moral damages.”^[5]

Appellant, through the Public Attorney’s Office, interposed a lone assignment of error; viz: “THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WHEN THE LATTER’S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.”^[6]

Appellant focuses much on the question of credibility of the witnesses for the prosecution. This Court has consistently held, however, that such an issue is, by and large, within the proper competence of the trial court. The credibility of a witness is a matter best left to the trial court because of its peculiar position of being able to observe his deportment on the stand while testifying, an opportunity that is denied to an appellate court. Thus, there is good reason for the latter to almost always accord finality to the findings of the trial court unless, as so often said, “there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.”^[7]

Understandably, appellant assails the reliability of the identification made by the prosecution for, after all, it is the only way by which his *alibi* could carry some weight. It is well-settled that a categorical and positive identification of an accused, without any showing of ill-motive on the part of the eyewitness testifying on the matter, prevails over *alibi* and denial, which are negative and self-serving evidence undeserving of real weight in law unless substantiated by clear and convincing evidence.^[8] In this case, both Genalyn and Gino have been able to identify appellant by the lightning flashes that illuminated their otherwise dark house and through his voice. It is known that the most natural reaction of a witness to a crime is to strive to look at the appearance of the perpetrator and to observe the manner in which the offense is perpetrated.^[9] Even the split-second illumination by a flash of lightning could suffice to confirm identification of appellant. Identification of an accused by his voice has also been accepted particularly in cases where, such as in this case, the witnesses have known the malefactor personally for so long^[10] and so intimately.^[11] In *People v. Calixtro*,^[12] the Court has given credence to the blindfolded rape victim’s identification of the accused, a barriomate, by his voice. Still in an earlier case, the Court has said:

“x x x [C]omplainant’s identification of the appellant was not based solely on the latter’s physical defect, but by his voice as well, when he warned complainant, ‘Flor, keep quiet.’ Although complainant did not see appellant’s face during the sexual act because the house was dark, nevertheless, no error could have been committed by the complainant in identifying the voice of the accused, inasmuch as complainant and appellant were neighbors.”^[13]

The young victim, narrating her ordeal, declared before the trial court:

“Q - You said that you were able to wake up in that late evening and you saw Pedro Intong on top of you, was Pedro Intong having his pants on when he was on top of you?

"A - He has no more pants.

"Q - How about you when you were awakened and you saw Pedro Intong on top of you and you can hardly breathe, where was your dress?

"A - He raised up my dress.

"Q - You said that your dress was raised up to your waist and Pedro Intong had no more pants and on top of you what did he do next to you?

"A - He kissed me at my cheeks.

"Q - Aside from kissing your cheeks what did Pedro Intong do to the lower part of your body especially your vagina?

"A - He made a push and pull motions.

"Q - You said that Pedro Intong had no more pants and made a push and pull motions, did you notice the organ or penis and eggs of Pedro Intong touching your vagina?

"A - Yes.

"Q - It was evening Genalyn, in fact you were sleeping and then you were awakened, how were you able to identify that it was Pedro Intong when it was evening?

"A - Because I am familiar with his voice and at the time he kissed me he told me to respond in kissing.

"Q - Am I right Genalyn that the roofing of your house is dilapidated and the roofing is covered with cellophane?

"A - Yes.

"Q - There was lightning during that time?

"A - Yes.

"Q - When there was lightning you were able to see Pedro Intong?

"A - Yes.

"Q - On top of you?

"A - Yes.

"Q - Doing the push and pull motions?

"A - Yes.

"x x x

x x x

x x x

"Q - After accused Pedro Intong made push and pull