

EN BANC

[G. R. No. 146854, April 28, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PASCUAL BALBARONA, APPELLANT.

D E C I S I O N

CARPIO MORALES, J.:

For automatic review is the October 31, 2000 Judgment^[1] rendered by the Regional Trial Court of Lanao Del Norte, Branch 2 convicting appellant, Pascual B. Balbarona, of raping his minor daughter and imposing on him the supreme penalty of death.

The Information^[2] for rape filed on May 31, 2000 charges appellant as follows:

That on or about May 28, 2000, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the said Odette M. Balbarona his daughter, a minor under fifteen (15) years of age, against her will.

Appellant pleaded not guilty to the accusation.^[3] The prosecution and defense subsequently entered into a stipulation of facts^[4] where it was admitted that the victim, Odette M. Balbarona, was appellant's daughter and was fifteen at the time of the alleged rape; and that appellant was then living with the victim and his two other daughters.

Based primarily on the testimony of the victim, the prosecution presented its case as follows:

In the afternoon of May 28, 2000, at about 2:00 p.m., the victim, her two younger sisters Gina and Jocelyn, and their widower father-herein appellant were at their house in Barangay Tambacan, Iligan City. Gina and Jocelyn soon after left for their neighbor's house to watch TV.

The victim, in the meantime, was about to go downstairs, after cleaning the second floor of their two-storey house, when appellant pushed her back. He then removed her clothes, made her lie down on the floor, pulled her panty down to her knees, and went on top of her.

Appalled, the victim asked appellant what he was doing, to which he replied that they were the only ones left in the house. She thereupon resisted by kicking him at his ear. The victim's strength was no match to the appellant's, however, as he held her hand and then inserted his penis inside her vagina, drawing the victim to shout in pain. Appellant thus got up immediately, put on his clothes, and later left the house.^[5]

The victim, meanwhile, got dressed and ran to the neighboring house of her elder sister Tessie Balbarona Commandro (Tessie) to whom she reported the dastardly act committed by their father upon her.

From her sister's house, the victim proceeded to another neighboring house, that of a friend, one Jean, to whom she likewise related the incident.

Jean thus accompanied the victim to Wilfredo Sarsaba (Saabada), a member of the paramilitary Civil Security Unit before whom the rape incident was also related.

After the occurrence of the incident and for the next two days, the victim stayed at Jean's house and refused to return home.^[6] She was later taken into custody by the Department of Social Welfare and Development. And she was examined by Dr. Leonardo Labanon, Medical Officer V of the Iligan City Health Office.

Corroborating her sister's *after the fact account*, Tessie went on to declare that she did not at first believe the victim whom she knew to be suffering from some mental imbalance since birth, but that anyway she advised her to have herself examined by a doctor and for her to stay in her (Tessie's) house.^[7]

Sarsaba, at the witness stand, recalled that when the victim, in the company of Jean, reported to him the incident, she appeared pale and distraught. He thus suggested that he accompany the two to the police precinct but they refused and left. Sarsaba added that later in the evening, he echoed to barangay councilor Tuto Babatido the victim's report.^[8]

Prosecution witness Dr. Labanon affirmed his findings in the Medical Certificate^[9] he issued concerning the pelvic examination he conducted upon the victim on May 30, 2000. On his finding that the victim had "hymenal notches at 6, 1 and 11 o'clock positions," Dr. Labanon stated that the notches were indentations at the inner surface of the hymen which notches were regarded as normal variants of a hymen and not indicia of lacerations. As for his finding that the victim's "introitus [is] still tight, admits only one finger with minimal resistance," Dr. Labanon opined that it was unlikely that the victim's introitus was already penetrated by a normal size penis. He conceded, however, the possibility that there could have been penetration of the victim's sex organ but only at the level of the labia since a partially erect penis may still penetrate the vagina to the extent of the labia and not the introitus.

While Dr. Labanon admitted that he could not determine whether there was penetration of the victim's vagina through the touching by the penis of the labia, he declared that the victim had told him that her father had sexually abused her several times although she could only remember the last incident, that which occurred on May 28, 2000 at their residence.^[10]

Another physician, Dr. Ray P. Sagge (Dr. Sagge), City Psychiatrist of the Iligan City Health Office, confirmed his conclusions in his July 18, 2000 Medical Abstract^[11] on the victim's mental condition that she is suffering from a mental illness classified as Mood Disorder, Major Depression coupled with a low level of intelligence below that of the average. By Dr. Sagge's account, the victim pointed to the rape incident as the cause of her depression.

The doctor rejected the idea that the victim was experiencing hallucinations, he adding that although she had at times difficulty in understanding questions propounded to her, she was on the whole coherent and was thus competent to become a witness.^[12]

Upon the other hand, lone defense witness appellant denied the charge and proffered alibi. He claimed that in the afternoon of May 28, 2000, at 2:00 p.m. when he allegedly raped his daughter, he was still in his workplace in Barangay Saray which is a kilometer away from his residence.

Elaborating, appellant declared as follows: He left home early at 4:00 a.m. of May 28, 2000 to carry out his work as a butcher for his employer Gill Eballe. Having been occupied butchering two cows and two pigs in the morning of said date, and roasting a pig in the afternoon, it was already 7:00 p.m. when he got home, his employer not having allowed him at any time of the day to leave the workplace. On his arrival at home, he found his three daughters watching TV at a neighbor's house, but only Gina and Jocelyn later returned home. Worried of the victim's whereabouts, he looked for her in the neighborhood whereupon his eldest daughter Tessie informed him that the victim had left with her friends. He thus scolded Tessie for allowing the victim to roam around instead of her (the victim) being of help in looking after her younger sisters. He continued searching for the victim until his arrest on May 31, 2000 at his workplace.^[13]

To the trial court appellant ascribes the following errors:

- I. THE COURT GRAVELY ERRED IN FINDING THAT THE HEREIN . . . APPELLANT HAD INDEED INSERTED HIS PENIS INSIDE THE VAGINA OF THE ALLEGED VICTIM
- II. THE COURT A-QUO GRAVELY ERRED IN NOT GIVING CREDENCE TO THE TESTIMONY OF DR. LEONARDO LABANON WHICH APPARENTLY SHOWS THE INNOCENCE OF THE HEREIN . . . APPELLANT OF THE CRIME CHARGED.
- III. THE COURT A-QUO GRAVELY ERRED IN APPRECIATING THE FACT THAT THE HEREIN . . . HAD INDEED RAPED THE ALLEGED VICTIM ON MAY 28, 2000 AT 2:00 O'CLCOK IN THE AFTERNOON.
- IV. THE COURT A-QUO GRAVELY ERRED IN FINDING THE HEREIN . . . GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE DEFINDE AND PENALIZED UNDER ARTICLE 266-A, PAR. 1, CHAPTER 3 OF THE REVISED PENAL CODE, AS AMENDED BY REPUBLIC ACT NO. 8353 (ANTI-RAPE LAW OF 1997).

Appellant assails the victim's testimony as failing to clearly show how it was possible for him to have raped her. He draws attention to her open court statements that she was still wearing her panty and appellant was wearing his brief when he went on top of her.

To belie the claim that there was actual penetration of or insertion of his penis inside the victim's vagina, appellant harps on the medical finding showing no lacerations in

her hymen, there being only hymenal notches which are normal to every female. He likewise harps on the medical opinion that since the victim's introitus admits only one finger, it was unlikely that the introitus was penetrated by a normal size erect penis.

Appellant thus argues that superior physical evidence has run counter against the People's testimonial evidence.

Finally, appellant singles out as a major flaw in the victim's testimony her declaration on cross-examination that she was sexually assaulted at 2:00 p.m. of May 28, 2000, albeit she also stated that she, at the same time, went to Jean's house.^[14]

Upon close examination of the transcripts of stenographic notes, this Court finds that the testimony of the victim is replete with details of how appellant carried out the sexual assault against her. Consider the following:

(PROSECUTOR CUETO)

Q On May 28 year 2000, where was your father then?

A He was just in our house.

Q Did he work on that day, as a butcher?

A No, sir.

Q How about you, where were you on that day, specifically about 2:00 o'clock in the afternoon?

A I was in our house.

Q Who was with you then?

A My younger sisters.

(COURT)

Q Your two younger sisters? You are referring to your two younger sisters?

A Yes, Your Honor.

(PROSECUTOR CUETO)

Q How about your father, was he there?

A Yes, sir.

Q Was there any instance whereby your two sisters left?

A Yes, sir.

Q So when your two sisters left, you and your father were left behind?

A Yes, sir.

Q While you were left alone with your father, was there any unusual incident that happened?

A Yes, sir.

Q What was that incident?

A I was cleaning the upstairs portion of our house.

Q While you were cleaning your house, what happened next?

A **My father suddenly went upstairs.**

Q **When he went upstairs, what happened?**

A **I was about to go down when my father instead pushed me inside the upper portion.**

Q **After he pushed you, what happened to you?**

A **He immediately removed my clothes.**

Q **How about your underwears?**

A **He likewise removed it.**

Q **How about your father, what did he do?**

A **He likewise removed his clothes.**

Q **After removing your clothes by your father and after your father had removed his clothes, what happened next?**

A **He made me lie down and then he immediately climbed on top of me.**

Q **What did he do after climbing on top of you?**

(COURT)

Q Climb or mount?

A **Once he mounted on top of me, he inserted his penis into my vagina.**

(PROSECUTOR CUETO)

Q **Was he able to penetrate or insert his penis to your vagina?**

A **Yes, sir.**

Q *Are you sure of that?*

A *Yes, sir.*