383 Phil. 775

SECOND DIVISION

[G.R. No. 117691, March 01, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO SAMPIOR Y BERICO, ACCUSED-APPELLANT.

D E C I S I O N

QUISUMBING, J.:

On appeal is the decision of the Regional Trial Court of Capiz, Branch 15, dated June 29, 1994, in criminal Cases Nos. C-4515 and C-4516, finding appellant Eduardo Sampior y Berico guilty beyond reasonable doubt of two counts of rape. Its decretal portion reads:

> "WHEREFORE, finding accused EDUARDO SAMPIOR Y BERICO guilty beyond reasonable doubt of the crime of rape in Crim. Cases Nos. C-4515 and C-4516, punishable under Art. 335 of the Revised Penal Code, as amended by R.A. No. 7659, and without the presence of mitigating or aggravating circumstances, and considering that his daughter-victim was already 18 years old at the time of the commission of the crime, he is hereby imposed with the penalty of reclusion perpetua in each of the aforesaid criminal cases. However, he is entitled to be credited in the service of his sentence for whatever imprisonment he had already undergone pursuant to art. 29 of the same Code.
>
> "SO ORDERED."[1]

Noteworthy, appellant does not seek an acquittal, but contends that he should have been convicted of frustrated rape only, and that the sentence on him should be reduced, correspondingly.

The facts of this case, as gleaned from the records, are as follows:

On March 5, 1994, private complainant, who is the eldest of appellant's nine children, was left in their house with her two younger sisters and a 2-month old infant brother. Appellant had gone out to harvest palay with his parents and some of his sons. Private complainant's mother, in turn, had left to sell fruits in the Bagong Lipunan Trade Center in Roxas City.

Around 10:00 o'clock in the morning, appellant returned to their house alone. He told the two small girls to go downstairs and play. The two obeyed, leaving only the appellant, the private complainant, and the sleeping infant. After private complainant placed her charge in his cradle, appellant suddenly pulled her towards him and began to take off her shirt and panty. Private complainant resisted and told him that she did not like what he was doing to her. Appellant persisted in his efforts. He forced her to lie down on the floor and removed her panty. The accused then removed his pants and brief and placed himself on top of her. He held his penis and

inserted it into the vagina of the complainant. After a short while, the appellant pulled out his genital organ, which emitted a fluid-like substance. He then told complainant to dress up. Assuring her that he loved her, he warned her not to tell anybody about the incident, otherwise he would kill them all. Shortly thereafter, appellant left the house.

At around 3:00 o'clock in the afternoon of the same day, appellant returned home smelling of liquor. He found private complainant alone and sexually abused her again.

Private complainant says she did not report the rapes immediately to the police, since she was confused and undecided about what to do. She also had her school examinations to contend with. She finally revealed her ordeal to her mother. They agreed to report the matter to the police, but decided to wait for the proper time.

On March 14, 1994, private complainant, with her mother's consent, reported the rapes to the police.

Private complainant was examined at the Roxas Memorial General Hospital by Dr. Michael Toledo. His findings were as follows:

> "PHYSICAL EXAMINATION:
>
> CONSCIOUS (sic) COHERENT AMBULATORY
> PELVIC EXAMINATION
> - GROSSLY NORMAL FEMALE GENITALIA
> - INTROITUS - ADMITS 1 FINGER WITH EASE
> - HYMEN -INTACT - OPEN
> DISCHARGE - WHITISH MUCCIS
> A/P
>
> - SPERMATOZOA DETERMINATION- NEGATIVE
> - PREGNANCY TEST – NEGATIVE"[2]

On March 24, 1994, private complainant filed two separate complaints for rape against her own father. The complaints were docketed as Criminal Case Nos. C-4515 and C-4516. The complaint in Criminal Case No. C-4515 states:

> "That on or about 10:00 o'clock in the morning of March 5, 1994, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, and exercising moral and parental ascendancy over the person of the complainant who is his natural daughter, did then and there, wilfully, unlawfully and feloniously, had carnal knowledge with EVELYN SAMPIOR, an eighteen (18) year old girl, against her will.
>
> "CONTRARY TO LAW."[3]
>
> The complaint in Criminal Case No. C-4516 reads:
>
> "That on or about 3:00 o'clock in the afternoon of March 5, 1994, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable

Court, the said accused, by means of force and intimidation, and exercising moral and parental ascendancy over the person of the complainant who is his natural daughter, did then and there, wilfully (sic), unlawfully and feloniously, had carnal knowledge with EVELYN SAMPIOR, an eighteen (18) year old girl, against her will.

"CONTRARY TO LAW."[4]

On arraignment, appellant, assisted by the public attorney, pleaded "Not guilty" to each charge.

The two cases were then jointly tried.

The prosecution presented three witnesses, including the complainant.

Dr. Toledo testified that he did not find any laceration of the complainant's hymen nor any contusions or other injuries in her body. However, he pointed out there are some hymens that are "thick, elastic and flexible,"[5] and thus, he could not discount the possibility that a rape victim's hymen would remain intact an exhibit no lacerations.[6]

Appellant did not take the witness stand. He chose not to present his side of the case. Instead, the defense presented the private complainant as a hostile witness to testify that there was no full penile penetration of her womanhood.

On June 29, 1994, the trial court convicted appellant of two counts of rape.

On appeal before this Court, appellant assigns the following errors:

I

THE COURT OF ORIGIN ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF CONSUMMATED RAPE.

II

THE COURT OF ORIGIN ERRED IN IMPOSING THE PENALTY OF RECLUSION PERPETUA AGAINST THE ACCUSED APPELLANT.[7]

The only issue before us is whether or not the trial court erred in finding that appellant is guilty of rape beyond reasonable doubt, and sentencing him to *reclusion perpetua* with the accessory penalties provided by law.

On the *first assigned error,* appellant's argues he should not have been convicted of rape, but only of frustrated rape. Appellant avers that since private complainant, as hostile witness, testified that the appellant's penis "only touched the outer side of her vagina,"[8] the two rapes were never consummated. Appellant's claim, however, is contradicted by the records. The transcripts show that private complainant categorically, credibly, and convincingly testified that there was phallic penetration of her private parts.[9] In the instant case, appellant has shown no reason why the