

## THIRD DIVISION

[ G.R. No. 124366-67, May 19, 1999 ]

### PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. JOSE PEREZ Y GALVEZ, ACCUSED-APPELLANT

#### DECISION

##### GONZAGA-REYES, J.:

On appeal before us is the judgment rendered by Branch 76 of the Regional Trial Court of San Mateo, Rizal dated August 18, 1995 finding the appellant Jose Perez guilty of two counts of rape under Art. 335 of the Revised Penal Code and sentencing him to suffer the penalty of *reclusion perpetua*, to pay the victim the amount of P30,000.00 for each count of rape and to pay the costs of the suit.

The complainant Cristina Perez is a 16 year old student who has been residing with her maternal grandfather in San Mateo, Rizal after her father abandoned the family and her mother went to Cavite to take care of another daughter.<sup>[1]</sup> The accused appellant Jose Perez is a 45 year old bachelor who works as a caretaker of the barangay hall in Banaba, San Mateo, Rizal and lives in the barangay hall, which is just walking distance from where the complainant lives.<sup>[2]</sup> The appellant and the mother of the complainant are first cousins which makes the appellant an uncle of the complainant.<sup>[3]</sup> The appellant saw the complainant everyday as she passed by the barangay hall on her way to school in the area where he directs traffic, and because they are relatives, he used to frequent the house of the complainant's grandfather and sometimes brings food and snacks.<sup>[4]</sup>

On November 21, 1994 two separate Complaints were filed by Cristina Perez against her uncle Jose Perez for rape:<sup>[5]</sup>

##### "COMPLAINT

The undersigned complainant CRISTINA PEREZ under oath accuses JOSE PEREZ Y GALVEZ of the crime of rape, committed as follows:

That on or about the last week of May 1994 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable court, the above-named accused, by means of threats, force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will and consent.

##### COMPLAINT

The undersigned complainant CRISTINA PEREZ under oath accuses JOSE PEREZ Y GALVEZ of the crime of rape, committed as follows:

That on or about the 4th day of June 1994 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable court, the above-named accused, by means of threats, force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant against her will and consent."

In her sworn statement dated August 11, 1994<sup>[6]</sup> Cristina narrated that towards the end of May 1994 she was awakened and saw her Uncle Peping, herein appellant, walk towards her and place a piece of cloth like a handkerchief or small towel on her nose and mouth and she lost consciousness. When she awoke the following morning she felt pain in her vagina and noticed some blood coming out and that her clothing, including her undergarments, were inside out. She confronted her uncle about the incident; he threatened her not to tell anyone or something ill will befall her. She stated that the appellant raped her again sometime in the first week of June 1994 in her aunt's house. She never told anyone about the incident until sometime in July 1994 when her relatives noticed that she is pregnant. She also stated that even prior to the said incidents, her uncle would call her to come to him but she never did and at times he would hit her with a stick or "siit". A Medico-Legal Report was filed and it was found that Cristina was 22-23 weeks pregnant as of August 11, 1994. She gave birth to a baby boy on December 8, 1994.<sup>[7]</sup>

In court Cristina testified that on March 30, 1994, even before she was raped at home by her uncle, while she was in a "peryahan" her uncle grabbed her and brought her to the back of a hut where he pointed a knife at her neck; tied her up, undressed and caressed her and thereafter inserted his penis in her vagina. It was painful. The incident lasted for about an hour and before he let her go he threatened to kill her if she told anyone of what happened.<sup>[8]</sup> As regards the two other rape incidents, she testified that sometime towards the end of May 1994 she was awakened by somebody walking in the room, she saw the appellant who immediately covered her face with a handkerchief with a nauseous odor; and she lost consciousness. The following morning the appellant was gone. She felt pain in her vagina and saw blood and a white substance on it. She washed her vagina. She also noticed that her blouse had a tear, her shorts were inside out and her panty was found in a corner of the room.

The same thing transpired during the incident that occurred in the first week of June 1994. She saw the appellant come to the house in the wee hours of the morning. She covered herself with a blanket to hide. Again the appellant came to her and placed a cloth to cover her nose and mouth with the same suffocating odor. The complainant tried to fight back but the appellant pointed a balisong knife at her neck, threatened to kill her, undressed her and once again raped her, "Pinagsamantalahan ho niya ulit ako". The complainant lost consciousness in the process. In the morning the appellant was gone and complainant woke up with her shirt rolled up and her undergarments removed.<sup>[9]</sup>

On cross-examination Cristina stated that the two incidents happened at the ground floor (silong) living room of her Aunt Celestina's house, an arm's length away from her grandfather's house, where she usually sleeps side by side with her 17-year old cousin Jocelyn . She also stated that she must have shoved Jocelyn while she

struggled against the appellant but when she asked Jocelyn the morning after the incidents if she noticed anything unusual the previous night Jocelyn responded in the negative.<sup>[10]</sup> On re-direct she stated that she and Jocelyn slept on the floor of the living room.<sup>[11]</sup> On re-cross she stressed that she could not talk to any member of the family about what happened to her.<sup>[12]</sup>

Celestina Perez, aunt of the complainant, testified for the prosecution and affirmed that the appellant is an uncle of the complainant and that he frequented their house before Cristina became pregnant. She stated that Cristina confided to the family that she was raped by her uncle only after they noticed her to be pregnant. She then accompanied Cristina to the police station to make a formal statement. Celestina testified that their family tried to settle the matter but Cristina refused to live as husband and wife with the appellant.<sup>[13]</sup> Dr. Owen Lebaquin, PNP Medico-Legal officer testified and affirmed in court the contents of his Medico Legal Report dated August 12, 1994 (Exh. F) that Cristina was found pregnant 22-23 weeks as of August 11, 1994 which period coincides with the sexual molestation of the victim in March 1994.<sup>[14]</sup>

The accused denied the alleged sexual assault of his niece. He admitted that he frequented the house where Cristina lives as it is just walking distance from the barangay hall where he lives and that he saw Cristina everyday when she goes to school. He stated that he has no misunderstanding with Cristina Perez, Celestina Perez nor with Cristina's grandfather, Juanito Perez. His relations with Juanito Perez were however strained sometime in April 1994 for reasons unknown to him. He also admitted that he came to know that Cristina became pregnant and that he did not visit Cristina's house after that.<sup>[15]</sup>

The trial court in a decision dated August 18, 1995 found the appellant guilty of two counts of rape and sentenced him to suffer the penalty of *reclusion perpetua* and to pay the complainant the sum of P30,000.00 for each count of rape and to pay the costs of the suit.

On appeal, the appellant raises the following assignments of error:

I

THE LOWER COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE ILL MOTIVATED AND FABRICATED TESTIMONY OF CRISTINA PEREZ

II

THE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

The appellant maintains that while as a rule the findings of facts made by the trial court are accorded great respect on appeal the rule does not apply when the trial court overlooked or misappreciated some fact or circumstance which if properly considered may alter the outcome of the case. Appellant claims that the complainant's testimony, on which the prosecution's evidence is mainly anchored, is of doubtful credibility; for the reason that the two rape incidents were allegedly

committed towards the end of May 1994 and on the first week of June 1994 while the complainant was sleeping side by side with her cousin and it is highly improbable for the rape to have been committed without waking the complainant's cousin sleeping alongside her. Moreover, Cristina gave birth to a baby boy on December 8, 1994, or barely six months after the rape incidents without a showing that the birth of the baby was premature. The appellant also argues that the charges against him were fabricated and ill motivated, fuelled by the resentment of the complainant's family towards the appellant.

The Solicitor-General filed brief for the appellee praying for the affirmance of the judgment of conviction and for the increase in the civil indemnity from P30,000.00 to P50,000.00 for each count of rape pursuant to prevailing jurisprudence. The appellee states that it is not impossible for the rape to have been committed without waking the complainant's cousin who was then sleeping beside her. The complainant testified that the appellant covered her nose and mouth with a malodorous handkerchief/towel and that she lost consciousness while she was being raped. She could not have raised a commotion to wake up her cousin who may have been in deep slumber in the early hours of the morning when the rape was committed. Appellee also argues that Cristina's pregnancy is not an element of rape; and the birth of her child six months after the incidents does not discredit her testimony that she was raped by her uncle in May and June of 1994 because she was previously raped by the appellant in March 1994 which incident coincides with the 9-month normal gestation period of the baby. The appellant's contention that the charges are fabricated and ill-motivated lacks basis.

The appeal is without merit.

Art. 335 of the Revised Penal Code, as amended by RA 7659,<sup>[16]</sup> states that the crime of rape is committed when the offender has carnal knowledge of a woman by using force or intimidation, or when the victim is deprived of reason or otherwise unconscious. The penalty for rape is *reclusion perpetua*.

The doctrinally accepted rule is that the trial court's assessment of the credibility of witnesses is accorded great respect and will not be disturbed on appeal unless a material or substantial fact has been overlooked or misappreciated, which if properly taken into account may alter the outcome of the case.<sup>[17]</sup> Factual findings of the trial court are generally sustained on appeal unless clearly arbitrary or baseless.<sup>[18]</sup>

Appellant's plea for the application of the exception to the above rule cannot be sustained after a careful examination of the record. We find that the trial court accorded due weight and credence to Cristina's testimony.

As regards the first rape incident in March 1994 Cristina testified in court as follows:  
<sup>[19]</sup>

"A: When I was at the peryahan he held me, sir.

Q: Who held you?

A: Jose Perez, sir

Q: And where were you brought by Jose Perez?

A: At the back of the hut, sir.

Q: And what did he do to you?

A: He tied me and pointed a knife at my neck, sir.

Q: And after he tied you and pointed a knife at your neck, what else transpired, Ms. Witness?

A: He undressed me, sir.

Q: Was he able to undress you?

A: All, sir.

Q: And after he undressed you, what did he do next?

A: "Pinaglalamas po niya ako at pagkatapos ay ipinasok niya ang ari niya sa akin, sir."

Q: Was he able to insert his penis to your vagina?

A: Yes, sir.

Q: And what happened to you while he was inserting his private part?

A: I was hurt, sir."

And as regards the May 1994 and June 4, 1994 rape incidents, respectively, she testified in court as follows:<sup>[20]</sup>

"Q: And you said that the rape was repeated on the last week of May 1994. Will you please tell before this court how it commenced?

A: While I was sleeping, I noticed that somebody was walking. Then, I looked for him and when I saw him, he covered my face, sir.

Q: You said him, who are you referring to?

A: Jose Perez, sir.

Q: What was he doing at the time?

A: I do not know, sir.

Q: And you said that all of a sudden, he covered your face. What happened to you after he covered your face?

A: I did not know anymore what happened to me that evening. But in the morning, I noticed that I was wearing a different dress, sir.

Q: Do you know what kind of material was used by Jose Perez in covering your face?

A: A white handkerchief, sir.

Q: How does it smell?

A: It has a bad odor, sir.

Q: Do you mean to say that because of that handkerchief you lost consciousness?

A: yes, sir.

Q: On the last week of May 1994, you said you were sleeping. What was your attire at the time?

A: I was wearing shorts and blouse, sir.

Q: And after you woke up, what happened to your blouse?

A: It was torn and my shorts was inverted and I was not wearing my panty anymore, sir.