

EN BANC

[G.R. No. 126096, July 26, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMADO SANDRIAS JAVIER, ACCUSED-APPELLANT.

D E C I S I O N

MELO, J.:

Once again, we are given the heavy task of reviewing a judgment of conviction imposing the death penalty in a crime so dastardly and repulsive incestuous rape. Considering that a person's life is at stake, we are burdened to come up with an error-free judgment amidst our frailties and imperfections, lest our conscience be bothered for rendering an irrevocable and irreversible error.

In the case under review, three separate complaints were filed against accused-appellant charging him with rape committed on October 20, 1994 and sometime on November, 1994 and December, 1994, against his daughter, Julia Ratunil Javier. The first complaint charged:

CRIMINAL CASE NO. 95-136

The undersigned complainant, who is a minor of 16 years of age, single, herein assisted by her grandmother, Mrs. Librada Ratunil, after being duly sworn to law, hereby accuses her father AMADO SANDRIAS JAVIER, who is detained under Illegal Possession of Firearm charge, of the crime of RAPE, committed as follows:

That in or about October 20, 1994, at more or less 1 o'clock in the afternoon, at Zone 5, Baikington, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, as father of herein complainant, by means of force, violence, and intimidation, while inside our dwelling house at the afore-mentioned place, and when said accused and herein aggrieved party were alone in their said dwelling house as the undersigned aggrieved-party-complainant's mother was out doing laundry work as a laundry woman, held and pulled undersigned complainant to accused's bedroom in said dwelling house and as the undersigned refused, wrestled and shouted for help, accused boxed and hit undersigned's stomach to unconsciousness and did then and there, against complainant's will and consent, wilfully, unlawfully and feloniously have carnal knowledge of the undersigned who noticed upon regaining consciousness that she was already stripped of her pairs of panty and pants and feeling extreme pain of her private parts, and then and there accused threatened the undersigned of death if

undersigned complainant would reveal the incident to undersigned's mother or to anybody else, thus, resulting to undersigned's pregnancy as examined and found out by the doctor, all against the will and consent of the undersigned, to her great damage and prejudice.

Contrary to and in Violation of Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659.

(p. 7, Rollo.)

The two other complaints were identically worded as the above complaint except that they respectively charged that the rape therein alleged occurred in November and December 1994.

Upon arraignment, accused-appellant pleaded not guilty. Thereafter, the cases were jointly tried.

As principal witness for the prosecution, Julia recounted her harrowing experience at the hands of her father. Her testimony was capsulized by the trial court in this wise:

At about 1:00 o'clock in the afternoon of October 20, 1994, while her mother was out doing some laundry for neighbors, thus she and the accused were left alone in their house at Zone 5, Baikingon, Cagayan de Oro City, and while she was at the porch of their house, accused called for her to the conjugal room and while thereat grabbed her right hand. She shouted for help but nobody came to her rescue from neighbors, the nearest of whom was about 60 meters away. Accused continued his sexual assault on her by boxing her abdomen resulting to her unconsciousness. When she regained consciousness, she felt pain in her vagina which was bleeding and wet with some sticky fluids. She cried but was warned by the accused that should she make an outcry and report the incident to her mother, he will kill her. Out of fear, and knowing that accused has a handgun, she held her outcry.

Parenthetically, the accused was also charged of Illegal Possession of Firearm in Criminal Case No. 95-141 committed on March 20, 1995 also raffled to this branch, to which he pleaded guilty and was sentenced accordingly on May 8, 1996.

Complainant further declared that applying practically the same force and intimidation and about the same time (1:00 P.M.) and again while complainant's mother was out doing some laundry for neighbors, accused repeated the sexual assault on her on November 18, 1994 and December 19, 1994.

Complainant testifying further declared that she has three older brothers and a sister. That she is the youngest and the only one who lived with her parents. Her three older brothers lived in Manila, Cotabato and the last one with her grandmother, Vda. De Librada Ratunil.

Out of fear, she kept the incident to herself until she felt some unusual pain in her body and when she can no longer manage said situation, she

finally broke her silence by going to her grandmother, Librada Vda. De Ratunil at 165 Capistrano Street, Cagayan de Oro City in the evening of March 15, 1995. She was asked by her grandmother about the author of her pregnancy, she answered that it was her father, the herein accused.

Complainant on cross examination, admitted having a sweetheart and were engaged for one year already prior to the incident. Her sweetheart, whom she identified as Michael Apduhan pays her a visit at times but on Saturday afternoon only with her mother around. Consequently, there was no occasion that she met her sweetheart alone for either her mother is around in the house or went out with her sweetheart with her "barkada" during disco dances on the eve of fiestas.

(pp. 24-26, Rollo.)

Julia's grandmother, Librada Vda. De Ratunil, corroborated Julia's story and narrated that on March 15, 1995, Julia arrived at her house and upon knowing the things that happened to her granddaughter, she wrote Julia's mother, Emma, her daughter, and informed her of the matter. They decided to report the matter to the police authorities at the Bulua Police Station in Cagayan de Oro City where they executed the complaints (tsn, October 11, 1995, pp. 19-20).

Dr. Tammy Uy of the National Bureau of Investigation, Region 10, examined the victim and made the following findings:

GENITAL EXAMINATION

Pubic hairs, fully grown, abundant. Labiae meiora and minor, both gaping. Fourchette, moderately lax. Vestibular mucusae, violaceous and with engorged veins. Hymen, tall, thick, fleshy, with old healed complete laceration at 9:00 o'clock position, and an old healed deep incomplete lacerations at 6:00 non-coaptable. Hymenal orifice, originally annular, admits a glass tube of 2.5 cms. Diameter with slight resistance. Vaginal walls, lax; rugosities obliterated. Uterus, enlarged with palpable fundus and with a fundic height of 12 cms. (between the umbilicus and symphysis pubis). Cervix, soft, non-tender, enlarged, bluish-purple. Light yellow mucoid cervical discharge is noted.

CONCLUSION

1. Genital findings present, compatible with sexual intercourse with man on or about 20 October 1994 as alleged and subsequently thereafter.
2. Probable signs of pregnancy present, consistent with the early part of the second trimester of pregnancy,

REMARKS:

Pregnancy Test gave + sign.

(pp. 23-24, Rollo.)

Meanwhile, the Department of Social Welfare and Development (DSWD) took custody of Julia who gave birth to a baby boy on August 22, 1995 but whom she would like to put up for adoption because he is a reminder of what her father did to her (tsn, Oct. 11, 1995, pp. 14-15).

Likewise, Julia was examined by DSWD Psychologist Ma. Lavern Labitad Jabien who found her to be suffering from inferiority complex and exhibiting feelings of inadequacy and insecurity. Julia was also said to "lack security in human relations because of her experience and the brutal treatment she received from her father," and "mentally deficient" as a result of "poor parenting or parental deprivation" (tsn, October 18, 1995, pp. 7-9).

Accused-appellant vehemently disputed the charges against him, alleging that the same were engineered by his mother-in-law, Librada Vda. De Ratunil, who despises him for being a drunkard. He further declared that Julia is an errant daughter, who after reaching the age of 14, started attending dances and acquired several sweethearts but only one of them paid visits at their house. Thus, he beat her, especially when he discovered her to be pregnant (tsn, December 6, 1995, pp. 14-18, 26).

Accused-appellant claimed that from October to November, 1994, he was working as a mason in the house of Bernabe Granada which is about 200 meters from his house. Among his co-workers were a certain Bermon, Dayata, and Dudong Granada, the son of Bernabe Granada. His working hours were from 6 A.M. to 6 P.M. Likewise, from December 1994 to February 1995, he said he was working at Carlito Caudor's house, also spending the same working hours therein. At the same time, he was also a member of the Barangay Tanod of Baikingon (tsn, *supra*, pp. 9-13).

To bolster accused-appellant's contention that he was working at the time the rape incidents happened, the defense presented his employers, Bernabe Granada and Carlito Caudor. Granada testified that in October 1994, he engaged accused-appellant for masonry work in the lay-outing of his house. Accused-appellant worked from 8 to 11:30 o'clock in the morning and from 1 to 4 o'clock in the afternoon and oftentimes took his lunch at the workplace. His house is located in Zone 6 while that of accused-appellant is in Zone 5. Accused-appellant stopped working for Granada on January 20, 1995 (tsn, March 13, 1996, pp. 4-5). On the other hand, Caudor testified that he had known accused-appellant for 15 years and that for the months of October and November, accused-appellant worked in Caudor's house from 8 to 11:30 o'clock in the morning and from 1 to 4:30 o'clock in the afternoon. Among his co-workers were Matias Remerane, Julieta Dayata, and Danilo Caudor (tsn, January 31, 1996, pp. 3-6).

After trial, on June 8, 1996, the Regional Trial Court of the 10th Judicial Region, Branch 21, in Cagayan de Oro City, presided over by the Honorable Arcadio D. Fabria rendered judgment finding accused-appellant Amado Sandrias Javier guilty of Rape under Criminal Case No. 95-136 and of Qualified Seduction in Criminal Cases No. 95-147 and 95-148, and disposed as follows:

WHEREFORE, the Court hereby finds the accused guilty beyond reasonable doubt of the crime of RAPE in Criminal Case No. 95-136 defined and penalized by Art. 335 of the Revised Penal Code as amended by R.A. No. 7659, and hereby sentences him to death and in Criminal

Cases Nos. 95-147 and 95-148 finds him guilty of Qualified Seduction under Article 337 of Paragraph 2 of the Revised Penal Code and sentences him to an indeterminate penalty in each case of (5) years, (5) months and (11) days of *Prision Correccional* as minimum to (6) years, (8) Months and 20 days of *Prision Mayor* as maximum and to indemnify the offended party the sum of P50,000 as moral and exemplary damages, to support the child until he shall have reached the age of majority and to pay the costs.

The accused is further ordered to recognize and acknowledge the said child as his son.

SO ORDERED.

(p. 35, *Rollo*.)

Accused-appellant assails said judgment and anchors his appeal on the general and catch-all argument that the trial court erred in convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

Accused-appellant questions the credibility of complainant mainly because she has a sweetheart and used to attend discos and benefit dances which lasted until midnight. He vainly tries to portray a picture of complainant as an unchaste and impure woman who was impregnated by her sweetheart at the tender age of 16. However, this Court believes that vilifying aspersion need not necessarily cast doubt on complainant's credibility nor would it negate conclusively the existence of rape. It should be pointed out that the moral character of the victim is immaterial in the prosecution and conviction of the accused. The Court has ruled that even a prostitute can be the victim of rape (*People vs. Edualino*, 271 SCRA 189 [1997]) for she can still refuse a man's lustful advances (*People vs. Iglanes*, 272 SCRA 113 [1997]). In the case at bench, complainant is certainly not a prostitute. She even clarified on cross-examination that she was always in the company of friends whenever she attended discos and fiesta celebrations and that she never went out alone with her sweetheart. She likewise stressed that whenever her sweetheart visited her at their house on Saturdays, her mother and father were always present (tsn, October 4, 1995, pp. 5-11). Indeed, accused-appellant's self-serving and unsubstantiated slur that his daughter is a woman of loose morals betrays his desperation to exculpate himself from liability. Against complainant's positive testimony, accused-appellant's self-exculpatory aspersion that complainant may have had sexual intercourse with other males simply cannot prevail.

Likewise, accused-appellant's contention that the filing of the case was instigated by complainant's grandmother fails to sway the Court from lending full credence to the testimony of complainant who remained steadfast throughout her direct and cross-examination. Even in these trying times of poverty and greed, it is difficult to believe that the grandparents of a child would allow her to be subjected to the ordeal and embarrassment of a public trial and to expose her private parts to examination just because they do not approve of accused-appellant as their daughter's husband (*People vs. Perez*, 270 SCRA 526 [1997]). On the contrary, accused-appellant admitted that his relationship with complainant's grandmother is not strained, as in fact, his mother-in-law used to extend assistance to his family (tsn, December 6, 1995, pp. 23-24).