

THIRD DIVISION

[G.R. No. 107800, October 26, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLLY PARANZO, @ LORENZO PARANI, ACCUSED-APPELLANT.**

DECISION

GONZAGA-REYES, J.:

This is an appeal from the decision dated September 3, 1992 of the Regional Trial Court, Fourth Judicial Region, Branch 76, San Mateo, Rizal in Criminal Case No. 1667 finding accused Rolly Paranzo alias Lorenzo Parani guilty of the crime of rape committed against complainant Anna Liza Jacobe and sentencing him to suffer the penalty of *reclusion perpetua*, to indemnify her in the amount of P30,000.00 and to pay the costs.

In a criminal complaint filed by Anna Liza Jacobe, with the assistance of her mother Gloria Jacobe, Rolly Paranzo alias Lorenzo Parani was accused of the crime of rape committed as follows:

"That in or about 1:00 a.m., on November 13, 1991, in the Municipality of Rodriguez, 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 wilfully, unlawfully and feloniously have carnal knowledge of the undersigned complainant Anna Liza Jacobe against her will and consent.

Contrary to law."^[1]

Upon arraignment, the accused pleaded not guilty. At the ensuing trial, the prosecution presented three witnesses, namely: Anna Liza Jacobe, her grandmother Rafaela Jacobe and Dr. Jesusa Nieves of the PNP Crime Laboratory Service, Camp Crame, Quezon City, who conducted the medical examination of complainant after the alleged incident of rape. The defense, on the other hand, presented Anna Liza Jacobe as hostile witness and the accused himself.

The trial court summarized the testimonies of the witnesses, as follows:

"Complainant's version of the subject incident is as follows: On November 13, 1991, at around 1:00 a.m., accused Paranzo raped her inside the house of one Teresa Rivera located at Yagit, San Rafael, Montalban. While she was sleeping, accused lied on top of her. She was awakened and she noticed blood on her shorts, the blood coming from her private part. She felt pain in her genital. She tried to stop him but he continued doing what he was doing. She did not shout because accused was intimidating her, pointing a knife at her neck.

Annaliza further alleged that that was not the first time that accused sexually abused her. Accused first raped her in 1990 near the calamansi plantation in San Jose, Montalban. She reported it to her mother but the latter did not do anything. The second time accused raped her was in the house of accused's brother located at the other side of the river. She did not do anything because accused was intimidating her. She was then living with her father at Ibayo, Maly but accused brought her to his brother's house and there raped her. The third time accused raped her (November 13, 1991), accused and her (complainant's) mother, who had been living together, were already separated.

Complainant's grandmother, Rafaela Jacobe, testified that complainant is the daughter of her (Rafaela's) son; that in November 1991, complainant was not living with her. Complainant started living with her only after the incident when she (complainant) was raped in the calamansian in San Jose, Montalban; that at the time complainant was raped, she was still eleven (11) years old; that she has no personal knowledge of the incident; that after the rape incident, complainant's mother gave complainant to her (Rafaela) because allegedly complainant is hardheaded; that she does not have a grudge against her daughter-in-law, complainant's mother, because she is a good woman and it is her son who was negligent; that complainant's mother and accused are not living together anymore because complainant's mother has another husband again, a different one.

Dr. Jesusa Nieves of the PNP Crime Laboratory Service, Camp Crame, Quezon City, conducted the medical examination of complainant after the alleged incident of rape. She testified that at the time of the examination which she conducted on November 15, 1991, at around 11:30 a.m., subject (complainant) was in a non-virgin state physically but there was no external sign of recent application of any form of violence; that there was no sign of infection, neither spermatozoa in the vagina and the area surrounding the passage of urine; that based on the healed laceration she saw during the examination, it is possible that the victim had sexual intercourse seven (7) days or more; It could be months or years based on the healed laceration, but based on the findings, which is abrasion on the labia menora, it is possible that there was recent trauma at the genitalia of the victim, meaning that the abrasion could have been caused by a rub or friction of a hard blunt object at the area of the genitalia, more or less within five (5) days prior to the examination on November 15, 1991; that the loss of victim's virginity was caused by sexual intercourse.

Subsequently in a surprise turn of events, complainant Annaliza testified for the Defense and stated that what she wants is "palabasin na po namin siya dahil wala naman pong nangyari sa amin" (TSN, p. 3, August 26, 1992 hearing). In connection with the said statement, complainant executed an affidavit of desistance. (Exh. 1). Complainant further testified that she lied when she testified before in Court and she lied when she executed her affidavit complaint in connection with this case; that when she testified, she agreed to tell the truth but when she testified before the Court, she was not telling the truth; that she is not aware that by giving false testimony, she can be held liable; that she

executed the affidavit of desistance because of the promise of monetary settlement but she had not yet been paid; that were it not for the monetary settlement, she would not execute the affidavit of desistance.

Upon the other hand, accused Rolly Paranzo pleaded "NOT GUILTY" to the charge when arraigned with the assistance of Atty. Regino Garillo, counsel *de oficio*, on January 23, 1992. He denied the charge against him and claimed that on the date and time of the alleged rape, he was working in a slaughterhouse in San Jose, Montalban. He reports for work at 4:00 p.m. and leaves work at 7:00 a.m. the following day. He works at nighttime.

Accused gave a reason for the filing of this case against him. Thus: the child's mother was borrowing P200.00 from him and since he did not lend her that amount, she threatened him by saying: "If you will not lend me that amount, you will regret afterwards". Subsequently, he was arrested by the police but he was not told the reason why he was arrested.

Accused further alleged that he was arrested on November 12, 1991, brought to Fiscal Nañola on November 13, 1991 and then to the Fiscal's Office in Pasig on November 14, 1991; that he signed the waiver of detention not knowing that it was a waiver since he was told by the police that it was regarding the food; that the slaughterhouse where he works is far from his place of residence. From Sitio Yagit going to San Jose, he would have to take a jeep since it cannot be reached by walking."^[2]

The trial court found that the accused-appellant raped Anna Liza as charged, and held that although there was no sign of violence on her body, rape was committed because she was under twelve years of age.

The dispositive portion of the decision states:

"WHEREFORE, premises considered, the Court finds accused Rolly Paranzo alias Lorenzo Parani guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Art. 335 of the Revised Penal Code and hereby sentences him to suffer the penalty of *reclusion perpetua*, to indemnify complainant Anna Liza Jacobo in the amount P30,000.00, and to pay the costs."^[3]

The accused-appellant appeals to this Court on the following assignment of errors:

"THE LOWER COURT ERRED IN CONVICTING THE ACCUSED NOTWITHSTANDING THE FACT THAT THE TESTIMONY OF THE COMPLAINANT WAS NOT CORROBORATED AND TAINTED WITH DOUBT.

THE LOWER COURT ERRED IN NOT GIVING FULL CREDIT AND CONSIDERATION ON (SIC) THE AFFIDAVIT OF DESISTANCE AND TESTIMONY OF THE COMPLAINANT WHO OPENLY TESTIFIED THAT SHE LIED BEFORE THE LOWER COURT.

THAT THE LOWER COURT ERRED IN MAINTAINING THAT COMPLAINANT WAS A MINOR ALTHOUGH NO PROOF OF BIRTH HAS BEEN PRESENTED."

^[4]

The appellant avers that a conviction for the crime of rape must be based on clear and convincing proof of guilt and not merely on the uncorroborated testimony of complainant Anna Liza Jacobe which is not clear and free from any contradiction. He points out that complainant's allegation that the rape on November 13, 1991 was committed in the house of a certain Teresa Rivera is not supported by any showing that she indeed slept at the said house on the night of November 12, 1991 and stayed there up to November 13, 1991, and that the complainant, sometime in the course of her testimony, retracted and testified that what she earlier told the lower court was a pure lie, thereby casting doubt on her credibility.

Appellant also contends that except for the testimony of Rafaela Jacobe, complainant's grandmother, no proof was ever presented to show the exact date of birth and age of the complainant. Furthermore, accused-appellant adverts to certain inconsistencies between the testimony of the complainant and that of Dr. Jesusa Nieves, i.e. Dr. Nieves testified that based on the healed laceration she saw during the examination, it is possible that the victim had sexual intercourse, months or years or not later than seven (7) days or more before; that the abrasion found on victim's labia menora is a recent trauma which could have been caused by a rub or friction of a hard blunt object at the area of the genitalia, more or less five (5) days prior to November 15, 1991 (TSN, pp. 5-6, July 16, 1992), whereas complainant testified that on November 13, 1991 at about 1:00 A.M., the accused-appellant raped her and as a matter of fact blood came out of her private part (TSN, p. 4, March 4, 1992; TSN, pp. 15-16, March 25, 1992). Thus, it was not possible that complainant was raped on November 13, 1991, which is only three (3) days before she was physically examined.

The Solicitor General filed brief for the appellee praying for the affirmance of the judgment of conviction of the accused-appellant and for the increase in the civil indemnity from P30,000.00 to P50,000.00 pursuant to prevailing jurisprudence. It is contended that the victim's testimony that she was raped by the accused in the early morning of November 13, 1991 at the ground floor of the house of Teresa Rivera, the then live-in partner of the accused-appellant, need not be corroborated by statements of other persons including that of Teresa Rivera who according to complainant all slept in the second floor of the said house that night and did not know that the accused and the complainant were at the ground floor. The appellee also contends that there is no inconsistency between the testimony of Dr. Jesusa Nieves and that of the complainant regarding the sexual assault committed by the accused-appellant.

As regards the alleged failure of the prosecution to establish that the complainant was below twelve years of age at the time of the rape incident, appellee argues that such contention is of no consequence because under Article 335 of the Revised Penal Code, rape is committed by having carnal knowledge of a woman by, among others, using force or intimidation and the instant case, the rape of the complainant was accomplished by using force and/or intimidation. The Solicitor General contends that on the two (2) earlier occasions that complainant Anna Liza was sexually molested, she was intimidated (TSN, pp. 3-4, March 25, 1992) and on the third time that she was ravished, a knife was pointed at her neck (TSN, p. 17, March 25, 1992). Whether or not complainant was below twelve years of age at the time she was raped is beside the point.

The appellee controverts the argument of the appellant that since Dr. Nieves' findings show that there was no external injury on the private part of Anna Liza,

sexual intercourse in this case could have been consummated with her consent and that the abrasion found at the labia menora could have been caused by the complainant herself by scratching her genitalia prior to her medical examination. The appellee maintains that as explained by Dr. Nieves, based on the healed laceration, it is possible that Anna Liza had sexual intercourse seven (7) days or more prior to November 15, 1991, but the abrasion at the labia menora could have been caused by sexual intercourse within five (5) days from November 15, 1991, the day she conducted the physical examination of Anna Liza (see TSN, p. 6, July 16, 1992), meaning that the sexual assault could have happened on November 13, 1991.

Finally, as regards the defense of alibi put up by the accused-appellant, as well as his contention that the victim's mother had an axe to grind against him, these claims are unavailing in the light of clear and positive evidence of the prosecution establishing accused-appellant's guilt. Besides, it was not physically impossible for the appellant to have committed the offense of rape imputed to him in or about 1:00 A.M. of November 13, 1991 for the reason that Sitio Yagit, Barangay San Rafael, where the rape incident happened and Barangay San Jose where the slaughter house (workplace of accused-appellant) is located are separated only by Barangay Balite and that these three barangays are located in the Municipality of Montalban, (now Rodriguez), Rizal which could be traversed by jeep.

We find no merit in the appeal.

Article 335 of the Revised Penal Code,^[5] states:

"Art. 335. *When and how rape is committed.* Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present."

Circumstances 1, 2 and 3 are alternative circumstances. When the rape is committed by using force or intimidation, the victim does not have to be less than twelve (12) years of age. It is only required that the proper complaint and information for rape must clearly describe the specific circumstance which would make the carnal knowledge of a woman qualify as rape under Article 335.

Otherwise stated, the complaint and information must concretely describe the crime of rape in any of the specified forms prescribed in the said Article 335 so as to duly inform the accused of the nature of the accusation against him.^[6]

The complaint in the case at bar alleges that the rape was committed by the accused-appellant against complainant's will and consent "by means of threats, force and intimidation."