

EN BANC

[G.R. No. 135915, December 21, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERT ERNEST WILSON, ACCUSED-APPELLANT.

DECISION

GONZAGA-REYES, J.:

This is a review of the decision rendered by Branch 171 of the Regional Trial Court of Valenzuela, Metro Manila dated September 30, 1998 finding the accused-appellant guilty of rape under Section 11 of Republic Act 7659.

On September 16, 1996 at about 11:40 p.m., 12 year old Veronica Pasco, assisted by her father, Pio Pasco, Sr. executed a sworn statement at the Valenzuela police station alleging that on June 27 and July 12, 1996, Albert Ernest Wilson, the live-in boyfriend of her mother, raped her and that earlier that afternoon of September 16th at around 4:30 p.m. when the two of them were alone in the house, the said Albert Ernest Wilson attempted to rape her but the phone rang and while he answered the phone she ran away.^[1] A Criminal Complaint for attempted rape arising from the September 16, 1996 incident only was filed in court against the said accused.^[2] The following day or on September 17, 1996 Veronica was brought to the Philippine National Police Crime Laboratory for physical examination and it was found the she has healed lacerations at 5 and 7 o'clock and that she is no longer a virgin.^[3] That same day, September 17, 1996, the father of the complainant filed a motion for reinvestigation in view of the medico-legal findings and the second sworn statement executed by Veronica wherein she stated that the accused succeeded in raping her on September 16, 1996. She explained that she previously alleged that the rape was not consummated because she feared her father might kill the accused if he found out that she was in fact raped.^[4] The motion for reinvestigation filed by the prosecution was granted and an Amended Information for consummated rape arising from the September 16, 1996 incident was filed in court on September 18, 1996. The Amended Information^[5] reads:

AMENDED INFORMATION

The undersigned complainant accuses ALBERT ERNEST WILSON @Suny @Kano of the crime of rape committed as follows:

That on or about September 16, 1996 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation employed upon the person of Veronica Pasco y Delistal, 12 years old, did then and there willfully, unlawfully and feloniously have sexual intercourse with me, against my will and without my consent.

Contrary to law.

(Sgd)
Veronica Pasco y Delistal
Complainant

Assisted by:

(Sgd)
Pio Pasco
Father

Subscribed and sworn before me this 17th day of September 1996 in
Valenzuela, Metro Manila.

(Sgd.)
Eriberto A. Aricheta
Asst. City Prosecutor

The accused was arraigned on October 18, 1996 and pleaded not guilty to the crime charged.^[6]

Veronica or Nica testified in court that her mother and father have long been separated and that she and her brother Pio Jr., or Jay-R lived with their maternal grandmother until her mother and live-in boyfriend, the accused, transferred them to their new house at No. 570-A Coloong I, Valenzuela, Metro Manila. She said that the accused, whom she calls Uncle Sony owns a bar at the Puerto Azul and he provides for her food and education. She filed this case because he raped her on September 16, 1996 at around 4:30 in the afternoon when her mother went to the municipal hall and her brother was still in school. She said that the appellant dragged her to the bedroom and laid her on the bed. He undressed her, pulled her legs apart, placed himself on top of her and inserted his penis inside her vagina. The phone rang and when the accused stood up to answer the phone she got up, got dressed and ran out the house.^[7]

Dr. Rosaline Cosidon, the PNP Medico-legal Officer who examined Nica testified in court to confirm the findings in the Medico Legal Report. She stated that she interviewed Nica prior to the physical examination and during the said interview Nica told her that on September 16, 1996 the accused tried to rape her but she was able to run away. Dr. Cosidon also testified that a vaginal laceration takes a few days to heal whereas in Nica's case no fresh laceration was found.^[8] The Medico-Legal Report states:

Medico-legal Report no. M-1369-96

Case: alleged rape

Victim : Pasco, Veronica, D

Birthdate; March 12, 1984

Time and date received: 1240H 17 September 1996

FINDINGS:

General and Extragenital:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with pale brown areola and nipples from which no secretion could be pressed out. Abdomen is flat and soft.

GENITAL:

There is scanty growth of pubic hair. Labia majora are full, convex and coaptated with pinkish brown labia minora presenting in between. On separating the same, disclosed an elastic, fleshy type hymen with shallow healed lacerations at 5 and 7 o'clock positions. External vaginal orifice offers moderate resistance to the introduction of the examining finger and the virgin sized speculum. Vaginal canal is narrow with prominent rugosities. Cervix is firm and closed.

CONCLUSION:

Subject is a non-virgin. There are no external signs of recent application of any form of trauma at the time of examination.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa

The accused denied the accusation and claimed that he could not have raped Nica at 4:30 p.m. of September 16, 1996 because Nica's mother and brother were both in the house at that time. He also argued that the physical evidence i.e., no fresh laceration was found in Nica's vagina, negates Nica's accusation of any rape committed the day before her physical examination. Moreover, Nica's contradictory versions of the alleged rape lead to only one conclusion i.e., that the accusation is fabricated.

Nica's brother, Jay-R, testified for the defense and stated that Nica was not raped by their Uncle Suny in the afternoon of September 16, 1996. Jay-R said that he was in the house together with Nica, their mother and Uncle Suny and that Nica left the house before their mother and Uncle Suny left to check on Uncle's Suny motorbike.

The trial court found the accused guilty of rape and imposed the death penalty pursuant to Section 11 of Republic Act 7659; the dispositive portion of the decision states:

Wherefore, accused Albert Ernest Wilson @Suny @Kano is hereby sentenced to death.

The accused is hereby ordered to indemnify the offended party the sum of P50,000.00.

Let the whole records of this case be forwarded immediately to the Supreme Court for automatic review.

SO ORDERED.^[9]

This case is before us on automatic review.

The accused-appellant raises the following assignments of error:

I

THE TRIAL COURT ERRED WHEN IT IGNORED THE GLARING DISCREPANCIES BETWEEN PRIVATE COMPLAINANT'S (1) ATTEMPTED RAPE SWORN STATEMENT (Exhibit "1") AND ATTEMPTED RAPE CRIMINAL COMPLAINT (EXHIBIT '3") ON THE ONE HAND AND THE CONSUMMATED RAPE TESTIMONY, ON THE OTHER.

II

THE TRIAL COURT ERRED WHEN IT IGNORED THE INCONSISTENCIES AND MATERIAL CONTRADICTIONS IN PRIVATE COMPLAINANT'S TESTIMONY WHICH ENGENDER DOUBTS ON THE GUILT OF ACCUSED-APPELLANT.

III

THE TRIAL COURT ERRED WHEN IT DID NOT CONSIDER THE UNNATURAL AND UNCOMMON BEHAVIOR OF PRIVATE COMPLAINANT AFTER THE ALLEGED RAPE.

IV

THE TRIAL COURT ERRED WHEN IT HELD THAT THE PROSECUTION'S STORY IS MORE CREDIBLE DESPITE THE CLEAR, POSITIVE TESTIMONY OF ACCUSED-APPELLANT THAT NO RAPE OCCURRED ON SEPTEMBER 16, 1996.

V

THE TRIAL COURT ERRED WHEN IT IGNORED THE TESTIMONY OF PRIVATE COMPLAINANT'S BROTHER THAT CORROBORATED THE TESTIMONY OF THE ACCUSED-APPELLANT ON MATERIAL POINTS.

VI

THE TRIAL COURT ERRED WHEN IT REFUSED TO GIVE CREDENCE TO THE CLAIM OF PRIVATE COMPLAINANT'S BROTHER THAT HE WAS IN THEIR RESIDENCE AT NO. 570-A, COLOONG I, VALENZUELA AT 3:30 P.M. OF SEPTEMBER 16, 1996.

VII

THE TRIAL COURT ERRED WHEN IT IGNORED THE TESTIMONIES OF THE MEDICO LEGAL DOCTORS WHICH ESTABLISHED THAT THERE WAS NO INDICATION OF FORCIBLE SEXUAL INTERCOURSE ON SEPTEMBER 16, 1996.

VIII

THE TRIAL COURT ERRED WHEN IT CONCLUDED THAT THE REASON FOR THE ABSENCE OF A FRESH HYMENAL LACERATION IS THAT THE SEPTEMBER 16, 1996 ALLEGED RAPE WAS NOT THE FIRST SEXUAL ABUSE COMMITTED AGAINST THE PRIVATE COMPLAINANT.

IX

THE TRIAL COURT ERRED WHEN IT HELD THAT THERE IS NO CLEAR SIGN THAT PRIVATE COMPLAINANT'S TESTIMONY IS FABRICATED.

The accused-appellant maintains that the accusation for consummated rape which allegedly occurred on September 16, 1996 is sheer fabrication as shown by her own contradictory statements. The private complainant, assisted by her father, executed a sworn statement before the police that the appellant attempted to rape her on September 16, 1996 and that she was previously raped by the appellant on June 27 and July 12, 1996. A criminal complaint for attempted rape allegedly committed on September 16, 1996 was filed in court on September 17, 1996. The following day, September 18, 1996, an Amended Complaint for consummated rape arising from the same September 16, 1996 incident was filed. Nica's proffered explanation for the sudden change in the nature of the accusation, i.e., that she feared her father might kill the appellant if he finds out that she was raped, cannot be believed as allegations of previous acts constituting consummated rape are already contained in her first sworn statement. The appellant contends that it is unbelievable for a young girl to have omitted to tell the police investigator when she executed her first sworn statement the crucial detail that the appellant's penis penetrated her if it really happened. It appears that the second sworn statement alleging acts constituting consummated rape was executed as an afterthought to pursue other motives than to tell the truth.

Accused-appellant also points out inconsistencies in Nica's testimony that erode her credibility. He claims that Nica's behavior immediately after the alleged consummated rape supports his contention that the accusation is false. Nica testified that after she was able to free herself from the appellant she went to her friend Juvy and together they went to Malanday to pawn her ring to raise enough money to go to her father. Further questioning however revealed that her father lives within walking distance from the appellant's house where Nica used to reside. When she saw her father at the grocery store she told him that she no longer wanted to live with her mother because the latter burned all her clothes. The accused-appellant points out that Nica did not really intend to see her father to ask for help; after the alleged rape she just went out with a friend and it appears that she accidentally saw her father at the Denmark Grocery in Malanday. Instead of immediately narrating to her father the incident about the alleged rape she complained about her mother's burning her clothes. Accused-appellant also contends that another indication that Nica made up the accusation for consummated rape is her account of the incident. She stated that appellant's right hand held both her hands to prevent her from struggling while his left hand undressed her and that the appellant's hand held her mouth to silence her and at the same time appellant undressed himself. It was not possible for the accused to have done all that Nica said he did with his two hands.

It is also pointed out that Nica kept changing her testimony during direct, cross, re-