

THIRD DIVISION

[G.R. No. 129213, December 02, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY PEREZ Y NAGSAGARAY, ACCUSED-APPELLANT.

D E C I S I O N

GONZAGA-REYES, J.:

This is an appeal from the decision dated October 29, 1996 of the Regional Trial Court, Branch 3, of Baguio City^[1] in Criminal Case No. 10271-R finding accused, Gerry Perez y Nagsagaray, guilty of the crime of rape, imposing upon him the penalty of reclusion perpetua and directing him to pay the offended party the sum of P50,000.00 as moral damages and to pay the cost.

In an Information dated August 14, 1992, Gerry Perez y Nagsagaray was charged by Regular Special Counsel Evelyn C. Tagudar of the crime of rape allegedly committed as follows:^[2]

"The undersigned Regular Special Counsel hereby accuses GERRY PEREZ y NAGSAGARAY, of the crime of RAPE, at the instance, relation and written complaint of MARIFE TICUAN y MANUIT, a minor, five (5) years of age. Copies of her statement are hereto attached and made an integral part of this Information, committed as follows:

That on or about the 12th day of August, 1992, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, and by means of force or intimidation, have carnal knowledge of the said complainant, MARIFE TICUAN y MANUIT, against her will and consent.

CONTRARY TO LAW."

Upon his arraignment on November 25, 1992, accused duly assisted by his counsel, pleaded not guilty to the offense charged.^[3]

The facts as summarized by the Office of the Solicitor General (OSG) in the appellee's brief,^[4] and which we find to be supported by the testimonies of the prosecution witnesses are as follows:

"On August 12, 1992, Federica Ticuan left her three (3) minor children in the house of her sister, Jane Pilis, (sic, should be Catalina dela Pena) under the care of her blind mother, Agnes Manuit, to tend her store. Federica's store was about 250 meters from the house of her sister (Pages 3-7, TSN Feb. 18, 1993). Federica's children are Marife, Myra and

Myleen, who were respectively aged five (5), three (3) and one (1) at the time of the incident in question (Pages 3-7, TSN, Jan. 18, 1993).

About 1:00 P.M. on the day in question, appellant, who was then a boarder at the first floor of the house of Catalina, went upstairs and asked permission from Agnes if he could come in and play with her granddaughters. Agnes inquired who he was and appellant responded that he was "Gerry" (Page 8, TSN, July 23, 1993). Thereafter, Marife and Jimmy dela Peña (cousin of Marife) asked permission from Agnes to play outside. After a while, appellant told Agnes that he would also go down.

Subsequently, Marife and Jimmy proceeded to the "bodega" adjacent to the house of Catalina where they played "sipa" together with their younger sisters (Pages 4-5, TSN, June 2, 1993).

While the children were playing, Jimmy suddenly went upstairs to repair his "sipa" toy (Page 2, TSN, June 9, 1993). At this point, appellant went inside the bodega (Pages 4-5, TSN, June 30, 1993).

Meanwhile, Agnes did not allow Jimmy to open the stove to repair his "sipa" toy. Thus, Jimmy just went downstairs to resume playing (Page 2, TSN, June 9, 1993). He saw Marife crying inside the structure where they prepare food for the pigs. He saw appellant "raping" Marife while the latter was standing near the pile of woods. He also saw appellant's penis discharging white fluid (Pages 6-8, TSN, June 2, 1993).

Thereafter, Marife went to her grandmother to complain. Marife was crying and telling that her private part was painful because appellant placed his penis inside her vagina (Page 4, TSN, June 30, 1993). Agnes asked why Marife did not shout, Marife replied that appellant was covering her mouth with his hand. Agnes was about to call Federica to tell what happened when Federica arrived (Pages 16-17, TSN, July 23, 1993).

Upon seeing Marife crying, Federica immediately inquired what happened, Marife told Federica that appellant abused her. Forthwith, Federica went down and asked Rudy Nagsagaray, uncle of appellant, regarding the latter's whereabouts. Rudy replied that he did not know where appellant was. He suggested that they look for him at Hillside, Baguio. Federica's father-in-law accompanied Rudy while Federica, together with Mrs. Quiño and Catalina dela Peña, brought Marife to the Baguio Hospital for examination (Pages 8-11, TSN, Feb. 18, 1993).

Dr. Frances Jane P. Kiat-Ong examined Marife and found out that there was reddening of her labia majora (Pages 4-9, TSN, Feb. 5, 1993).

After the examination, Federica, together with Marife and their companions, proceeded to the police station near the hospital because they were informed that appellant was already at the police station at Campo Sioco for investigation (Pages 11-15, TSN, Feb. 18, 1993)."

For his defense, accused testified that at around 12:00 P.M. of August 12, 1992, he was cooking in his rented house owned by the complainant; At around 1:00 P.M. he bade goodbye to Agnes Manaut (the victim's grandmother) and told her that if ever his Uncle, Rogelio Nagsagaray, would look for him he will be at Hillside, Baguio; He said that he went to Hillside because he had work the next day and Hillside was quite far.^[5] That in the evening of the same day, his Uncle and the victim's father came to Hillside and instructed him to go with them to substation 5 where he saw the complainants typing their complaint. Later, he was placed inside a van and they proceeded to the police station where he was detained.^[6] On cross-examination, he testified among others that from Bakakeng Norte where he lives up to the Hillside, he had to take 2 rides, i.e. from Bakakeng Norte to City Proper would take 10 minutes and another 5 minutes from City Proper to Hillside. He was able to reach Hillside at about 1:20 o'clock in the afternoon and he stayed there the whole day. On re-direct, he further claimed that he had a misunderstanding with the mother of alleged victim Marife Ticuan as Mrs Ticuan accused him of stealing plywood and having often influenced her husband to join in a drinking spree.^[7]

After weighing the testimonies of both the prosecution and defense witnesses, the trial court convicted the accused as follows:^[8]

"WHEREFORE, the Court finds the accused, GERRY PEREZ y Nagsagaray GUILTY beyond reasonable doubt of the crime of RAPE defined and penalized under Art. 335 of the Revised Penal Code, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to pay the offended party the sum of P50,000.00 as moral damages and to pay the costs.

And the word of the law, it is thundered:

"Dura lex, sed lex, meaning,
The law is harsh, but that is the law."

SO ORDERED"

Accused has appealed from the judgment of conviction, submitting the following assigned errors:^[9]

I

THAT THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THAT THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCREDIBLE AND UNBELIEVABLE TESTIMONIES OF THE PRIVATE COMPLAINANT AND HER WITNESSES.

Accused-appellant faults the trial court for finding him guilty of the crime of rape based on the testimonies of prosecution witnesses which he alleges to be replete with flaws and improbabilities. He alleges that there exists inconsistencies between

the sworn statements of victim Marife Ticuan and also of Jimmy dela Pena and their declarations in court. In trying to cast doubt on the credibility of the prosecution witnesses, accused-appellant points out the following:

(1) Victim Marife Ticuan and his cousin Jimmy dela Peña testified that they were in the company of other children, namely: Myra, Mylen and Gladys playing sipa and that the place where the alleged rape took place was a one- room place. Accused claims that if it was true that he molested the victim, it could have been seen by the other children who in the ordinary way of things would have come to Marife's succor or go out to report the unusual incident; that raping Marife when the playmates were around would be highly improbable and runs contrary to human nature and experience because the mere presence of other people deters a person from committing a crime more so the rape of a child;

(2) Jimmy testified that from the bodega where they were playing, he ran upstairs to light his sipa; when her grandmother forbade him from doing so, he immediately rushed down again to the bodega. Accused-appellant claims that considering Jimmy's youthfulness and energy it took Jimmy only a minute to do this, leaving the accused a very short time to enter the bodega, look for Marife, remove her panty, put out his penis and have intercourse with her. Accused-appellant claims that in Marife's testimony, she said that after he inserted his penis inside her vagina, it took a long time thereafter before he removed his sexual organ, but from Jimmy dela Peña's testimony, it took Jimmy a very short interval to run from the bodega and return back;

(3) The actuation of Federica Ticuan , the victim's mother, elicits suspicion. After learning of her daughter's ordeal, she chose to look first for the accused and not finding him, looked for the uncle of the accused instead of immediately bringing her daughter to the hospital;

(4) In Marife's sworn statement, she stated that she was made to lie on a table and was violated, and in her direct examination, she even said that accused went on top of her. However, on cross-examination, Marife declared that she was standing when accused removed her panty and inserted his penis inside her vagina. Accused-appellant claims that it would take a great deal of resourcefulness and creativity to imagine how this could happen considering that he is a full grown man of 20 years, standing 5 feet 6 ½ inches in height whereas the victim is but a child of a little more than 5 years old. Accused-appellant further contends that the medico legal findings negate the commission of rape since not a tiniest injury appear, and there was no hematoma and no lacerations;

(5) The "de-virginization" of a woman causes pain on her genitals, and yet the victim's actions after the alleged rape, i.e. she was able to run upstairs to where her grandmother was, walk to the jeepney which brought them to the hospital and also walk her way inside the hospital where she was examined, are contrary to human nature which only indicate the absence of any injury on her person;

(6) If accused-appellant had committed the alleged rape, he would not

have informed the victim's grandmother of his whereabouts i.e., that he was going to the Hillside, on that fateful day;

(7) The Ticuan family has an axe to grind against him; before the alleged incident the victim's mother, Federica, accused him of stealing plywood and of being a bad influence upon her husband.

We find no merit in this appeal.

To begin with, discrepancies or inconsistencies between a witness' affidavit and his testimony in open court do not necessarily impair his credibility. Affidavits are taken ex-parte and are often incomplete or inaccurate for lack of or absence of searching inquiries by the investigating officer.^[10] In the same vein, minor inconsistencies and contradictions in the declaration of the witnesses do not destroy such witnesses' credibility but even enhance the truthfulness of their declarations as they erase any suspicion of a rehearsed testimony.^[11] Discrepancies as to who were the companions of victim Marife when they played sipa inside the bodega, the interval of time between Jimmy's leaving the bodega and his return, and the position of victim Marife when she was raped, refer only to minor details which do not refer to the commission of the crime itself nor the positive identification made of the accused-appellant as Marife's ravisher.

We shall discuss these issues seriatim.

Anent accused-appellant's argument of the improbability of rape having been committed considering that the place where the alleged rape took place was only a room without a bed and any partition, and the presence of the victim's playmates, does not persuade. It is established that lust is no respecter of time and place and rape can be and has been committed in even the unlikeliest of places. We have repeatedly held that rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where there are other members of the family who are sleeping.^[12] There is no rule that rape can be committed only in seclusion.^[13] Thus the presence of the victim's sisters would in no way deter the accused appellant from perpetuating his lustful designs as these children are even younger than Marife and could not be expected to realize what accused-appellant was doing to Marife. The trial court correctly observed:^[14]

"Second, grati argumenti that there were persons present at the time the accused performed his bestial act on the young girl, how would one expect a 3-year old Myra and 11/2 year old Myleen to know what the accused was doing upon their 5 year old sister Marife? They still do not know what is sex. If these two young children had observed what the accused was doing to their sister, still they are not aware whether or not such actuation of the accused is against the laws of man and of God. Rape can be committed in any place, says the Supreme Court in the case of People vs. Remota, supra."

Accused-appellant next claims that when Jimmy went upstairs to fix his sipa and immediately came down after her grandmother forbade him from lighting his sipa, only a short interval of time had elapsed and the rape could not have taken place in such a short time. The argument is not tenable. While it may be true that the act of