383 Phil. 434

THIRD DIVISION

[G.R. No. 129074, February 28, 2000]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR LOMERIO, DEFENDANT-APPELLANT.

D E C I S I O N

GONZAGA-REYES, J.:

Accused-appellant SALVADOR LOMERIO (hereafter SALVADOR) prays for the reversal of the Decision[1] of the Regional Trial Court of Antipolo, Rizal, Branch 74 dated January 16, 1977 finding him guilty of the crime of RAPE based on an Information which alleges:

> "That on or about the 23rd day of March, 1993 in the Municipality of Antipolo Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force and intimidation did then and there willfully, unlawfully and feloniously have sexual intercourse with a minor ten (10) years old girl, Leonila Bunagan, without her consent and against her will.
>
> CONTRARY TO LAW."[2]

On August 22, 1994, SALVADOR entered a plea of not guilty upon arraignment, trial then proceeded with the prosecution presenting the following witnesses: Vilma Bunagan, mother of the victim, Leonila Bunagan (hereafter LEONILA), private complainant, Dr. Hesusa Nieves Vergara, Medico legal Officer, Camp Crame, Quezon City, Dr. Renato Bautista, Medico Legal Officer, NBI Manila, Marvie Bunagan, Concepcion Bahiwag, Social Worker and Roberto Bunagan. The prosecution offered Exhibits "A" to "G" as evidence.

The defense for its part presented SALVADOR as its lone witness and offered no documentary evidence.

The version of the People as presented by the Solicitor General narrates the details of the crime, *viz*:

> "On May 23, 1993, Vilma Bunagan, together with her eldest son Roberto, went to her parents' house at Tuazon St., Marikina, Metro Manila to bring her two-year-old son who was sick. She left behind in their Antipolo house her other five children, namely, LEONILA, Marvie, Lotis, Marichu and Edmar, who were the ages 10, 8, 7,6 and 1, respectively.
>
> Worried that something bad could happen to her children while unattended by an adult companion, because her husband Mario was staying in Divisoria and working as a mason, Vilma instructed Roberto to fetch his younger brother and sisters from Antipolo. Roberto, however,

failed to do so as he went for an interview for a job on the same day (TSN, Nov. 9, pp. 3-9; July 3, 1995, p.4).

At about 8:00 p.m., Vilma asked her youngest brother, Salvador Lomerio (SALVADOR), to fetch the children from Antipolo and bring them to Marikina. SALVADOR agreed and left that night for Antipolo in the company of Roberto (TSN, Nov. 9, 1994, pp. 7-8; Nov. 22, 1994, p.5; July 3, 1995, p. 3).

SALVADOR and Roberto arrived at the house in Antipolo at about 11:00 p.m. Roberto left behind SALVADOR who stayed for the night. LEONILA was awakened when the two arrived. LEONILA opened the door for SALVADOR and thereafter went back to sleep. SALVADOR stayed in the sala smoking cigarettes while LEONILA and her brother and sisters were lying down. Later, SALVADOR took off his clothes and went near LEONILA. SALVADOR then got LEONILA's hands and pinned her down. After taking off her shorts and panty, SALVADOR placed himself on top of LEONILA and then forcibly inserted his organ in hers for a long time. LEONILA was hurting. All she could do was cry. SALVADOR went back to the sala and slept (TSN, Nov. 22, 1994, pp. 5-8).

Again, at about 12:00 midnight of the same date, Salvador went back to LEONILA and raped her for the second time. SALVADOR threatened LEONILA that he would kill all of them if she would report the rapes to anybody. Marvie was likewise raped by SALVADOR in the early morning of the following day (TSN, Nov. 22, 1994, pp. 8-10; March 13, 1995, pp. 3-5).

As if nothing untoward happened, Salvador instructed the children to dress up so they could go to Tuazon in Marikina and join their mother (TSN, Nov. 22, 1994, p.10)."[3]

Vilma Bunagan, the mother of LEONILA testified that she learned of the rape on March 25, 1993 from a "*kumare*", Anita Fernandez who heard of it from a certain Totoy, who is one of the playmates of Marvie, sister of LEONILA. When Vilma asked LEONILA, the latter confirmed that SALVADOR abused her. Vilma then brought Marvie and LEONILA to Camp Crame to have the two girls examined after which, she filed a complaint against SALVADOR with the Cogeo Police Station.

The examination conducted by Dr. Jesusa Nieves Vergara, Medico Legal Officer, Camp Crame, Quezon City reveals that LEONILA is in virgin state physically as there was an absence of external signs of recent application of violence although there are congestions or redness on the genital and sex organ of LEONILA which could have been caused by possible penetration on the labia minora.[4]

SALVADOR as the lone witness for the defense testified that on March 23, 1993, he was at the Bunagan's house to accompany the children of his sister. There was no bedroom in the house and the children slept on the floor in the main sala while he slept on one side near the window and was separated from the children. When he woke up at about 6:00 o'clock in the morning, he did not remember any unusual incident that happened on that night except that he accidentally touched the breast of LEONILA when he woke up. He apologized to her. SALVADOR believes that the

accidental touching of LEONILA's breasts triggered the filing of the complaint for rape.

On January 16, 1997, the trial court found SALVADOR guilty of Statutory Rape. The dispositive portion of the judgment reads:

> "WHEREFORE, the Court finds the accused Salvador Lomerio guilty beyond reasonable doubt of the offense of Statutory Rape as defined and penalized under Art. 335 (c) of the Revised Penal Code and considering against him two aggravating circumstances of nocturnity and abuse of confidence, accused Salvador Lomerio is hereby sentenced to suffer the indivisible penalty of Reclusion Perpetua (the offense was committed before the effectivity of the Heinous Crimes law); to pay the offended party P100,000.00 in moral damages, and to pay costs.
>
> SO ORDERED."[5]

SALVADOR maintains his innocence and seeks the reversal of the quoted decision on these grounds:

> I
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> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED FOR RAPE AS THERE WAS NO RAPE AT ALL.
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> II
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> THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE VICTIM WHICH ARE UNNATURAL TO A PERSON HAVING BEEN ALLEGEDLY RAPED.
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> III
>
> THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND REHEARSED TESTIMONIES OF PROSECUTION WITNESSES.[6]

The overwhelming evidence of the prosecution against SALVADOR clearly establishes his guilt beyond reasonable doubt.

In claiming that no rape at all was committed, SALVADOR relies on some portions of the direct examinations of Vilma Bunigan, LEONILA, Dr. Jesusa Nieves, and Dr. Renato C. Bautista. SALVADOR also capitalizes on the medico legal finding that "complainant is in virgin state with no signs of injury in the genitalia" and concludes that "in the absence of these injuries, there is doubt that rape was committed against the victim".[7]

Contrary to SALVADOR's claim, the testimonies of Vilma Bunigan, LEONILA, Dr. Jesusa Nieves, and Dr. Renato C. Bautista, taken in their entirety tell a credible account of the rape of LEONILA by SALVADOR.

In a prosecution for rape, courts exercise circumspection in determining the credibility of the victim. If her testimony meets the test of credibility, the accused

may be convicted on the basis thereof.[8] The convincing and credible testimony of LEONILA sealed the conviction of SALVADOR. Moreover, the prosecution also drew its strength from its other witnesses, particularly from Marvie, LEONILA's sister who saw how SALVADOR ravished LEONILA that fateful night. Marvie, then eight years old, was also allegedly raped by SALVADOR the morning after he raped LEONILA.

We recognize the doctrine that testimonies of rape victims who are of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credit as the willingness of the complainant to face police investigation and to undergo the trouble and humiliation of public trial is eloquent testimony of the truth of her complaint.[9] In this case, LEONILA was proven to be only ten years old when SALVADOR raped her.

Furthermore, the issue of credibility is best addressed to the trial court judge who observed first hand the demeanor and deportment of the witnesses. Appellate courts will not disturb the findings on the credibility, or lack of it, accorded by the trial court to the testimony of witnesses, unless it be clearly shown that the trial court had overlooked or disregarded arbitrarily certain facts and circumstances of significance in the case.[10]

SALVADOR insists that the inconsistencies in the testimony of LEONILA as to the location of the floor where she was sleeping on, which brother or sister woke up, or the size of the room, taint the credibility of LEONILA. We are not persuaded. The so-called lapses in the testimony of LEONILA are trivial and do not touch upon the material aspects of the crime.

We take note of the fact that the victim in this case is a child. Ample margin of error and understanding should be accorded to young witnesses who, much more than adults, would be gripped with tension due to the novelty of the experience of testifying before a court.[11] To LEONILA's credit, she was forthright and consistent in describing how SALVADOR raped her, as can be seen from the following:

> "Q: Do you recall anything that happened that night?
> A: He was then at the sala and smoking a cigarette while we were on the bedroom and already lying down. During the night he took off is pants and went on top of me.
> Q: Where did Salvador take off his clothes, in the sala or in your room?
> A: At the sala, mam.
> Q: Where were you sleeping that night?
> A: On the floor, mam.
> Q: Where is the floor located in the bedroom or in the sala?
> A: In the bedroom.
> Q: Who were with you who were sleeping with you in the bedroom?
> A: Marvie, Lotis and Edmar.
> Q: You mentioned earlier that Salvador took off his clothes and then what did he do afterwards?
> A: He took off his clothes but I was then sleeping and he went near me and got my hands and pinned them down and he went on top of me and then he (witness demonstrating pumping motion).

Q: Did he take off his clothes that night?
A: Shorts and panty.
Q: Did he take off your shorts and panty before he went on top of you?
A: Yes, mam.
Q: When you mentioned that he placed himself on top of you and pinned your arms. Did he insert his organ in your sex organ?
A: Yes, mam.
Q: What did you do feel when he inserted his organ to your sex organ?
A: It hurt and I cried and cried.
Q: How long did he insert his organ to your sex organ?
A: For a long time, mam.
Q: What did you do?
A: I cried and cried.
Q: Did anyone of your brothers and sisters wake up due to your crying?
A: There was, mam, my younger sister.
Q: What is the name of your younger brother or sister who woke up?
A: Edmar, mam.
Q: Did you notice anyone of your brothers and sisters who also woke up that night?
A: Yes, mam.
Q: Who else woke up that night?
A: He was the only one.
Q: How long did he insert his organ to your sex organ?
A: For a long time.
Q: What did he do afterwards?
A: After that he left.
Q: And then what happened afterwards?
A: He went to lay down in the sala and went to sleep.
Q: Do you recall anything else that happened that night?
A: There was at around 12:00 o'clock.
Q: What happened at around 12:00 o’clock that night?
A: He went back to me.
Q: What did Salvador do to you?
A: He again went on top of me.
Q: Did he take off his clothes?
A: He took off his shirt, but he did not take off his pants.
Q: When he was on top of you at around 12:00 o'clock, did he take off his short?
A: Yes, mam.
Q: Did he take off your shorts or panty at around 11:00 o'clock?
A: Yes, mam.
Q: Did he insert his organ to your sex organ at around 11:00 o'clock?
A: Yes, mam.
Q: How long did he insert his organ to your sex organ?
A: For a long time, mam.
Q: What did you do?
A: I cried and cried.
Q: Did Salvador threaten you?
A: Yes, mam.
Q: What did Salvador tell you?