

EN BANC

[G.R. No. 123544, July 29, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL BERANA Y GUEVARRA, ACCUSED-APPELLANT.

D E C I S I O N

ROMERO, J.:

In this sordid tale of defloration, a man is saved from the gallows for failure of the prosecution to adduce clear and positive proof of his relationship with the complainant.

Before us on automatic review is a decision rendered by the Regional Trial Court of Naga City, Branch 25, imposing the supreme penalty of death on herein accused-appellant, Raul Berana y Guevarra for the crime of rape.^[1]

The facts of the case are as follows:

On June 2, 1994 at around 2:00 o'clock in the morning, 14-year old Maria Elena Jarcia was sleeping with her four-year old niece in one of the two rooms in a house her family was renting at Bayawas Street, Naga City when she was awakened by her brother-in-law, herein accused-appellant, Raul Berana. Complainant recognized him because light was filtering in from a nearby window. Berana pointed a "buntot page" at her neck and warned her not to make any noise, otherwise she would be killed.

The terrified girl was made to lie down while accused-appellant raised her duster and proceeded to remove her shorts and her underwear, after which he mashed her breast and lay on top of her. The hapless girl was again threatened not to make any noise otherwise he would kill her. Complainant tried to cover her breasts with her arms but accused-appellant pushed her arms aside. As he inserted his organ into her womanhood, Elena felt excruciating pain. He began kissing her and made several push and pull movements, after which, the victim felt something liquid in her organ. Accused-appellant sat down and warned her not to talk to anyone about the incident.

His bestial lust not having been satisfied, accused-appellant lay on top of her for the second time, fondled her breast and made push and pull movements. At around 2:30 o'clock in the morning, accused-appellant left after warning her that only the two of them must know about the incident. During the entire time that the accused-appellant was raping her, the poor girl was weeping and trembling with fear because he repeated his threats to kill her should she make any noise. Complainant, before having identified in court Exhibit A as the "buntot page" used by accused-appellant, described it as "long with some protruding parts and with long and pointed tip"^[2]

After the accused-appellant left, Elena put on her clothes and went to the adjacent

room to report the incident to her sister, Ma. Ana. When Ana heard the grim story, she lost no time in hurrying to Camaligan, Camarines Sur where their parents , having been invited to a birthday party of a relative, had stayed overnight. On the same day, their mother fetched Elena and accompanied her to the Provincial Hospital for medical examination. The medical examination conducted revealed the following findings:

P.E.

Vagina admits one finger

(+) Hymenal Laceration at 6:00 o'clock and 9 o'clock positions

Gram Staining Result:

-gram (+) bacilli = many

-pus cells = few

-epithelial cells = many

NOTE: Gram stains smear shows presence of spermatozoa^[3]

After having been examined, Elena and her mother proceeded to the Sabang Police station in Naga City to report the incident. Thereafter, accused-appellant was apprehended by the police.

On June 3, 1994, an information was filed before the Regional Trial Court of Naga City, Branch 25, against accused-appellant for the crime of rape, allegedly committed as follows:

That on or about June 2, 1994, in the city of Naga, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused by means of force, did then and there willfully, unlawfully and feloniously, have sexual intercourse with the herein complaining witness, MARIA ELENA JARCIA Y DE LOS MARTINEZ, a minor, 14 years of age.

CONTRARY TO LAW

On June 6, 1994, an amended information was filed against accused-appellant which reads:

That on or about June 2, 1994, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, a relative of the offended party within the third civil degree, by means of force and intimidation, did there and then, willfully, unlawfully and feloniously have sexual intercourse with herein complaining witness MARIA ELENA JARCIA Y DE LOS MARTINEZ, a minor, 14 years of age, to her damage and prejudice.

CONTRARY TO LAW

Upon arraignment, accused-appellant entered a plea of not guilty.

On October 12, 1994, the prosecution again sought the amendment of the information filed in accordance with the mandate of Section 5, Rule 110 of the Revised Rules on Criminal Procedure relating to *de officio* offenses which require the offended party's express conformity to the filing of the information.

On October 17, 1994, accused-appellant entered plea of not guilty to the re-amended information.

Accused-appellant does not deny having sexual intercourse with the complainant but, however, maintains that Elena consented to it. According to accused-appellant, at around 1:30 o'clock in the morning of June 2, 1994, he had difficulty sleeping, so he took a walk and decided to visit his daughter at the house in Bayawas Street. When he arrived at the said place, he sat on the stairs at the rear of the house. While seated, he heard someone calling, "Mama." He recognized the voice as Elena's so he answered, "this is not your mama, this is your manoy,"^[4] On hearing these words, complainant opened the door and approached accused-appellant to ask him where her mother was, whereupon, accused-appellant told her that her parents might not return home because her father got drunk at a birthday party of a relative in Camaligan. He then asked Elena if his daughter was already asleep. Upon having been informed that his daughter had just fallen asleep, accused-appellant bade Elena goodbye but the girl, invited him to stay for the night so that he could keep watch over her and his daughter. Accused-appellant accepted her invitation since he was very tired. When he entered the room, Elena followed him and locked the door. Seeing his daughter sleeping soundly on a mat, he picked her up and moved her away from the middle to the left side so as not to disturb her. Elena turned off the light from the gas lamp and lifted the mosquito net to prepare for bed.

At this point, she reminded the accused-appellant of the sum of money which she had been asking him some time. When told that he had no money, complainant allegedly started to caress and embrace accused-appellant while at the same time insisting that he give her the money. When he reiterated that he had no money, complainant took hold of his hand and placed it on her breast. Complainant allegedly was wearing only an undershirt and panty at the time. Accused-appellant, feeling "hot", decided, and succeeded in having sex with her. During the sexual intercourse, Elena told him, "It is painful, manoy." but accused-appellant tried to assuage the pain, saying that it is painful only during the first time.^[5] Afterwards, accused-appellant sat beside Elena and engaged her in conversation. Elena allegedly asked him to help her when she completes high school. When accused-appellant promised to help her on condition that she will be serious in her studies, Elena rose from her lying position and embraced him. He kissed her on the lips, touched her breasts and asked her again for sex. Complainant allegedly smiled and told him, "To my sister, you could only do it one (sic) but to me you will make it two,"^[6] They had sex for the second time in the early morning of June 2, 1994. Accused-appellant left the room at around 2:30 o'clock in the morning. While answering a call of nature near a santol tree outside the house, he heard Ma. Ana ask Elena, "What did your manoy do to you?", to which the latter answered, "None, none." Accused-appellant heard nothing more as he decided to go on his way.^[7]

Accused-appellant narrated that prior to the incident, or specifically on December

1993, he was alone in the same room, reading an adult magazine when Elena arrived. She saw what he was reading and remarked that she had read the same magazine also. Embarrassed, accused-appellant turned away and went near the window to continue his reading. Complainant, in the meantime, removed her school uniform leaving only her "sando" and her panty on. She approached accused-appellant and told him of the interesting parts in the magazine. When he told her that he had already seen them and was just reviewing the magazine, she told him, "Manoy, there are parts there which are beautiful." He then showed her the adult magazine and asked her to point out where these were. Elena placed her arms on his shoulders as she obliged him. When she embraced him, accused-appellant responded by embracing her back. He felt "hot" and placed his hand on her cheek then began touching her breast also. However, she turned her lips away so he ended kissing her cheek instead. Elena responded by kissing his cheek in turn. Accused-appellant, this time, kissed her lips and touched her breasts. They moved away from the window to avoid unwitting voyeurs. Somebody soon arrived and interrupted them so Elena became flustered and accused-appellant left. They maintained no relationship after the incident.

The trial court did not give credence to the testimony of accused-appellant and on November 27, 1995, rendered a decision, the dispositive portion of which reads as follows:

PREMISES CONSIDERED, this court finds accused-appellant guilty beyond reasonable doubt of the crime of rape defined and punishable under the provisions of Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 which provides

The death penalty shall be imposed when the crime of rape is committed with any of the following circumstances

1. When the victim is under eighteen (18) years of age and the offender is a x x x relative by consanguinity or affinity within the third civil degree.

The accused being the husband of the victim's sister, is related by affinity to his victim within the third civil degree, the court hereby imposes upon Raul Berana y Guevarra to suffer DEATH PENALTY , to pay Ma. Elena M. Jarcia, the amount of P50,000 by way of damages and to pay the costs.

In this automatic review of the decision rendered by the trial court, accused-appellant raises the following issues:

- I. The trial court erred when it convicted herein accused-appellant despite the absence of any clear and convincing evidence demonstrating the alleged use of force.
- II. The trial court erred when it convicted herein accused-appellant despite serious lapses and material inconsistencies in the testimony of the private complainant.
- III. The trial court erred when it convicted herein accused-appellant despite the prosecution's failure to adduce clear proof of all the attendant qualifying circumstances of the crime charged

IV. The trial court erred when it convicted herein accused-appellant based on a misplaced conclusion that herein accused-appellant allegedly admitted committing the offense charged

We shall deal with the issues raised *seriatim*.

Regarding the first issue, accused-appellant contends that the trial court's finding that he had forcible sexual intercourse with the complainant was based solely on the results of the medical examination conducted by the prosecution's witness, Dr. Humilde Janaban on Elena. In support of his contention, appellant cites the following excerpt from the trial court's decision:

*A careful perusal of the evidence adduced during the trials conducted in this case, show that the medical certificate of June 2, 1994 which was identified by Dra. Ma. Humilde B. Janaban, showing that the victim, private complainant Ma. Elena M. Jarcia suffered "Hymenal laceration at 6:00 o'clock and 9:00 o'clock positions in her private part which could have been caused by sexual intercourse and /or by the intervention of a blunt object by thrusting and then pulling then thrusting again of a hard blunt object and the presence of spermatozoa confirms the testimony of Ma. Elena Jarcia that she was sexually molested makes such testimony credible. **To the mind of the court this [sic] findings are significant to the effect that sexual intercourse was involuntary or through threat and duress.** The absence of any kind of external injury in the body of the victim other than those found in her organ is of no consequence.*

Accused-appellant alleges that Elena encouraged his advances and the sexual intercourse was consensual. He asserts that while the hymenal laceration and the presence of spermatozoa prove the fact of sexual intercourse, they do not *ipso facto* prove that such act was committed by means of force, in line with our pronouncement in *People vs. Godoy*^[8] that, "Even granting *ex gratia argumenti* that the medical report and the laceration corroborated the complainant's assertion that there was sexual intercourse, of course the same cannot be said as to the alleged use of force. It has been held that such corroborative evidence is not considered sufficient, since proof of facts constituting one element of the crime is not corroborative proof of facts necessary to constitute another equally important element of the crime."

Accused-appellant's contention is misplaced. The trial court's finding of rape in the case at bar, was not based solely on the medical findings showing hymenal laceration and the presence of spermatozoa in the victim's organ. While the excerpt quoted by the accused-appellant from the questioned decision gives the impression that the trial court considered the hymenal laceration and the presence of spermatozoa in the victim's organ as proof of forcible sexual intercourse, the decision read in its entirety shows otherwise. The trial court merely considered the medical findings as corroborative evidence for the complainant's testimony that accused-appellant had sexual intercourse with her. Complainant was forced to accede to accused-appellant's advances because he poked a "buntot page" at her neck and threatened to kill her should she make any noise. With such repeated threats, the hapless girl eventually broke down and cried.