

THIRD DIVISION

[G.R. No. 133186, July 28, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL YABUT Y GAPOS, ACCUSED-APPELLANT.

D E C I S I O N

ROMERO, J.:

This is an appeal from the February 11, 1998 decision of the Regional Trial Court of Urdaneta, Pangasinan finding accused-appellant Noel Yabut y Gapos guilty of the crime of rape, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay his victim the amount of P50,000.00 as indemnity.

On October 6, 1997, accused-appellant was charged with having committed the crime of rape, as follows:

That on or about the midnight of September 9, 1997, at Poblacion municipality of Pozorrubio, province of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused entered the room of Krystal Kay T. Salcedo and once inside by means of force and intimidation, did then and there wilfully, unlawfully and feloniously (sic) have sexual intercourse with said Krystal Kay T. Salcedo, a minor ten (10) years old, against her will and without her consent, to her damage and prejudice.

Contrary to Art. 335, Revised Penal Code, as amended by R.A. 7659.^[1]

Upon arraignment, accused-appellant entered a plea of not guilty. Trial on the merits subsequently ensued, with the prosecution presenting as its witnesses the victim, Krystal Kay Salcedo, her father Conrado, the doctor who examined Krystal, and the police officer who investigated Krystal's complaint. On the other hand, the defense presented only one witness-Krystal's father.

The evidence for the prosecution shows the following:

Krystal Kay Salcedo is a ten-year old child, having been born on January 4, 1987. She is the daughter of Conrado and Anabelle Salcedo, the eldest of four daughters. On the night of September 8, 1997, Krystal and her three sisters were alone in their house, as their father had been invited to a neighborhood party and their mother was working in Malaysia. The four went to sleep, as was their wont, side by side on a bed inside their room, which was located on the ground floor of their house. At around midnight, Krystal woke up to find a person reeking of liquor moving up and down on top of her. She recognized this person to be accused-appellant, the latter being a nearby neighbor whom she often saw drinking with her father. Krystal did not shout or wake her sisters up for fear that accused-appellant would kill her. Accused-appellant then undressed himself as well as Krystal. She testified seeing his

penis.

Again mounting Krystal, accused-appellant tried to insert his penis inside her. Krystal felt pain while accused-appellant was doing so. She testified seeing whitish fluid seeping out of the accused-appellant's penis.

Accused-appellant then dressed and left. Krystal turned on the light and wiped herself clean. After a few minutes, accused-appellant came back to look for his driver's license, and soon left. Krystal's father arrived minutes later but she did not report the incident for fear that the latter would kill accused-appellant. Next morning, however, Krystal related her experience to her classmates in school.

That night, Krystal, upon the prodding of an aunt, related what had transpired the previous evening. Upon learning what happened, her uncles informed her father, who rushed out in search of accused-appellant. He was, however, intercepted by the barangay captain, who advised them to file a complaint with the police. Upon filing the complaint, the police required them to have Krystal examined by a doctor.

On cross-examination, Krystal testified that, before sleeping, she had locked the door to their room which had a hook-and-eye fastener attached. While sleeping between two of her sisters, she awoke to find accused-appellant on top of her. Krystal likewise admitted that the lights were off when she awoke. She did not cry or shout while accused-appellant was on top of her. When asked how she recognized accused-appellant, she testified that her room was illuminated by a nearby street lamp. There was also a street lamp in front of her window, which was, however, not yet operational at the time of the incident. Lastly, she said that when her father arrived and asked why she was still awake, she replied that she was putting up a mosquito net and her father did not notice anything unusual.

Dr. Francisco Llamas, the Chief of the Pozorrubio Community Hospital who conducted the medical examination of Krystal, reported that there was presence of hyperemia at the whole vaginal introitus, including the labia minora, as well as a fresh laceration at the six o'clock position. Krystal, however, tested negative for spermatozoa. On direct examination, Dr. Llamas explained that hyperemia at the whole vagina introitus meant redness of the opening of the vagina. He attributed the same to contact with a blunt instrument, possibly an erect penis. The doctor likewise clarified that the laceration was located at the opening of the vagina and that it was fresh, i.e. less than 24-hours old. Again, he attributed the same to forcible contact with a blunt instrument.

On cross-examination, Dr. Llamas testified that the redness and the laceration could have been caused by the insertion of a finger or by scratching. Likewise, he testified that Krystal was still a virgin and that her hymen was intact.

The testimony of Conrado Salcedo, Krystal's father, as well as that of the investigating police officer substantially corroborate the narration of Krystal as to the events that transpired from the time she told her aunt about the incident up to the time of the filing of the complaint with the police.

In his defense, accused-appellant presented the father of Krystal as his sole but hostile witness. On direct examination, Conrado Salcedo testified that the room where Krystal and her sister slept in was located twelve to fourteen meters away

from the basketball court. Likewise, Conrado testified that the room had no lock.

After considering the evidence presented during the trial, the court *a quo*, on February 11, 1998, found accused-appellant guilty of the crime of rape. The dispositive portion of the judgment reads:

WHEREFORE, JUDGMENT is rendered convicting NOEL YABUT y GAPOS of the crime of SIMPLE RAPE, an act punishable by Article 335 of the Revised Penal Code as amended by Republic Act 7659. The Court hereby sentences Noel Yabut y Gapos to suffer the penalty of Reclusion Perpetua, ordering Noel Yabut to pay Krystal Kay Salcedo the sum of P50,000.00 for damages.

The Branch Clerk of Court is hereby ordered to prepare the mittimus.

SO ORDERED.^[2]

Aggrieved by the decision of the trial court, accused-appellant now appeals his conviction to this Court, pointing to the following circumstances as indicative of his innocence: *First*, in Krystal's statement to the police, she said she was awakened by a man pulling down her panties, while in court, she said she was awakened by a man making an up-and-down movement on top of her; *Second*, accused-appellant claims that it was improbable for Krystal to have recognized him as her assailant since her room was very dark; *Third*, he declares to be bizarre Krystal's account of his return to look for a driver's license; *Fourth*, accused-appellant doubts whether the alleged rape incident really occurred since Krystal's father did not notice any fear or anxiety in Krystal upon his arrival that night; *Fifth*, accused-appellant points to the medico-legal report finding Krystal negative for spermatozoa as indicative that the rape did not occur; *Sixth*, accused-appellant claims it was unlikely for him to have raped Krystal as the latter was sleeping with her three other sisters in one bed at the time of the alleged rape incident; and *lastly*, accused-appellant claims that the contradictory statements of Conrado and Krystal as to the presence or absence of a lock on the room door raises doubts on the prosecution's evidence.

We shall discuss the above-mentioned points *seriatim*.

Firstly, accused-appellant assails Krystal's credibility by referring to the inconsistency between her testimony and her sworn statement as to the reason why she woke up. In her statement before the police, Krystal stated that she woke up when she felt her panties being pulled down her leg. In open court, however, she testified that she woke up when she felt a man making an up-and-down movement on top of her.

This inconsistency does not, and cannot, in any way affect the credibility of Krystal, the same merely referring to a minor matter which is in no way connected to the elements of rape or to the identification of accused-appellant by the former.^[3] Moreover, we consider Krystal's testimony in court to be superior to her extrajudicial statements. Judicial notice can be taken of the fact that testimonies given during trial are much more exact and elaborate than those stated in sworn statements, *ex parte* statements usually being incomplete and inaccurate for a variety of reasons, at times because of partial and innocent suggestions or for want of specific inquiries. Additionally, an extrajudicial statement or affidavit is generally not prepared by the