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[G.R. Nos. 144523-26. June 10, 2003]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FLORENTINO QUIJANO SR.,** *appellant.*

SYNOPSIS

Appellant was found guilty by the trial court of four counts of rape for sexually abusing his eighteen-year old daughter. He was sentenced to suffer the penalty of death in each count. Hence, this automatic review of the case. Appellant alleged that the prosecution's evidence failed to sufficiently establish his guilt beyond reasonable doubt.

The Supreme Court ruled that the prosecution has the burden of establishing the presence of each of the elements of the crime charged. This responsibility it failed to discharge in the present case. On record are merely the following pieces of evidence: (1) the victim's conclusion that she was raped, (2) the testimony of her mother and her sister that she was abused, and (3) the medical finding that she had incomplete healed lacerations on her hymen. Whether taken singly or collectively, the foregoing circumstances do not prove rape beyond moral certainty. Undoubtedly, carnal knowledge or sexual intercourse is a must-element in the crime of rape. In the case at bar, carnal knowledge between the victim and appellant was not established. Consequently, the Court acquitted appellant on reasonable doubt.

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; HOW COMMITTED.**— Rape is committed when carnal knowledge of a woman is obtained under any of the following circumstances: (1) when force or intimidation is used, (2) when the woman is deprived of reason or is otherwise unconscious, or (3) when she is under twelve years of age.

2. **ID.; ID.; ID.; REQUIRES ACTUAL PENETRATION OF THE FEMALE ORGAN BY THE MALE ORGAN.**— "[U]nder Article 335 of the Revised Penal Code, actual penetration of the female

Supreme Court E-Library

sex organ by the male sex organ is required as an element of rape. This penetration constitutes carnal knowledge, which is synonymous with sexual intercourse." Undoubtedly, "carnal knowledge or sexual intercourse is a must-element in the crime of rape." In the case at bar, carnal knowledge between Leah and appellant was not established.

3. **ID.; ID.; ID.; VICTIM'S INCOMPLETELY HEALED HYMENAL LACERATIONS ARE INSUFFICIENT TO PROVE BEYOND REASONABLE DOUBT THE OCCURRENCE OF CARNAL KNOWLEDGE; CASE AT BAR.**— Complainant's incompletely healed hymenal lacerations were likewise insufficient to prove beyond reasonable doubt the occurrence of carnal knowledge. As admitted by the examining physician, such lacerations could have also been caused by the passing of blood clots during menstruation, not necessarily by sexual intercourse.

4. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE BURDEN OF ESTABLISHING THE PRESENCE OF EACH OF THE ELEMENTS OF THE CRIME CHARGED RESTS ON THE PROSECUTION.**— The prosecution has the burden of establishing the presence of each of the elements of the crime charged. This responsibility it failed to discharge in the present case. On record are merely the following pieces of evidence: (1) the victim's conclusion that she was "raped," (2) the testimony of her mother and her sister that she was "abused," and (3) the medical finding that she had incomplete healed lacerations on her hymen. Whether taken singly or collectively, the foregoing circumstances do not prove rape beyond moral certainty.

5. **ID.; ID.; A CONVICTION CANNOT BE MADE TO REST ON IMAGINATION; CASE AT BAR.**— A conviction cannot be made to rest on imagination. The Constitution requires moral certainty or proof beyond reasonable doubt. The scant evidence on record cannot justify a leap to the conclusion that the "abuse" appellant perpetrated on Leah amounted to carnal knowledge under any of the three circumstances specified in Article 335 of the Revised Penal Code.

6. **ID.; ID.; TESTIMONIAL EVIDENCE; WITNESSES CANNOT BE PERMITTED TO TESTIFY AS TO A CONCLUSION OF LAW; CASE AT BAR.**— "[A] witness is not permitted to testify as to a conclusion of law." Whether or not complainant was

Supreme Court E-Library

raped by appellant is the issue in this case. This question must be decided by the judge — not by Leah, her mother or her sister. As it is, she cannot foist on him her own conclusion that she was "raped."

7. ID.; ID.; BURDEN OF PROOF; IN CRIMINAL CASES, THE PROSECUTION HAS THE *ONUS PROBANDI* IN ESTABLISHING THE GUILT OF ACCUSED; CASE AT BAR.— The defense of denial proffered by appellant is not convincing. Nevertheless, considering that he is the accused and not the prosecutor, we do not see what else he could have posed during the trial, beyond a mere denial. It was not for him, but for the prosecution, to prove that he did not rape his daughter. "It is settled jurisprudence that in criminal cases the prosecution has the *onus probandi* in establishing the guilt of the accused. *Ei incumbit probatio qui dicit, non que negat, i.e.*, he who asserts, not he who denies, must prove."

APPEARANCES OF COUNSEL

Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PANGANIBAN, *J.*:

To prove the commission of rape, the prosecution must establish facts that clearly show all the elements of the crime. Testimonies that the complainant was "abused" or "raped" are insufficient, because these are mere conclusions. Witnesses testify on what the facts are; judges, on the other hand, draw conclusions or judgments from the established facts.

The Case

For automatic review before this Court is the June 21, 2000 Decision[1] of the Regional Trial Court (RTC) of Bauang, La Union (Branch 67) in Criminal Case Nos. 2261–2264, finding

[1] Penned by Judge Jose G. Paneda.

Supreme Court E-Library

Florentino Quijano Sr. guilty beyond reasonable doubt of four (4) counts of rape. The decretal portion of the Decision reads:

"WHEREFORE, judgment is hereby rendered:

"a) finding the accused, Florentino Quijano, Sr. guilty of the crime of Rape beyond reasonable doubt in Criminal Case No. 2261;

"b) finding the accused, Florentino Quijano, Sr. guilty of the crime of Rape beyond reasonable doubt in Criminal Case No. 2262;

"c) finding the accused, Florentino Quijano, Sr. guilty of the crime of Rape beyond reasonable doubt in Criminal Case No. 2263;

"d) finding the accused, Florentino Quijano, Sr. guilty of the crime of Rape beyond reasonable doubt in Criminal Case No. 2264;

"e) hereby sentencing Florentino Quijano, Sr. the penalty of death in each count;

"f) ordering Florentino Quijano, Sr. to indemnify Leah Quijano in the sum of ₱100,000.00 as moral damages, without subsidiary imprisonment in case of insolvency; and

"g) ordering Florentino Quijano, Sr. to indemnify Leah Quijano the sum of ₱50,000.00 as civil indemnity for each count of rape."[2]

Four similarly worded Informations[3] charged appellant with rape as follows:

"That on or about and sometime in 1994, in the Municipality of Bauang, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation and actuated by lust, did then and there willfully, unlawfully and feloniously have sexual intercourse with his daughter LEAH QUIJANO an 18 year old girl against her will and consent, to the damage and prejudice of the offended party."[4]

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[2] Assailed Decision, pp. 20-21; *rollo*, pp. 51-52.

[3] All signed by Assistant Provincial Prosecutor Maryfrances F. Maliaman.

[4] Criminal Case No. 2261, *rollo*, p. 12; Criminal Case No. 2262, *id.*, p. 13; Criminal Case No. 2263, *id.*, p. 14; Criminal Case No. 2264, *id.*, p. 15. All the Informations were dated August 26, 1999.

Supreme Court E-Library

With the assistance of his counsel,[5] appellant pleaded not guilty during his arraignment on October 13, 1999. In due course, he was tried and convicted of four counts of qualified rape.

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) summarizes the evidence for the prosecution in this wise:

"At the time she testified in 2000, Leah Quijano (private complainant, for brevity) was 18 years old.

"From 1994 to 1996, private complainant was residing in Acao, Bauang, La Union with her mother Lucia, sister Florita, and eight (8) brothers. During this period, private complainant was abused more or less five times a week in the single bedroom of their house by her father, Florentino Quijano, Sr.

"Private complainant told her mother that appellant repeatedly ravished her, but the latter was not able to do anything since she was afraid of him. Even her brothers and her sister Florita knew of the incidents of rape. She noted that there were times when Florita and her brothers were about to enter the room, appellant and private complainant had just left and private complainant was crying.

"Private complainant did not inform other people about the repeated sexual abuse by her father for fear of appellant. When the incidents of rape took place,x x x Lucia was at the market, Florita was working, while her brothers were sent out by her father. Appellant would pull private complainant who could not resist because of fear. Every time she was abused by appellant, private complainant just cried. During the times when Florita was at home, she noted that 'everytime (private complainant) went out from the room, she was crying and she (Florita) asked her and she (private complainant) confided to (Florita) that she (private complainant) was raped by (appellant).'

"The last rape incident occurred on May 28, 1999 when appellant abused private complainant on the wooden bed in their room. Florita, who was herself abused by appellant, escaped from their residence and went to Philex, San Fernando City, where she worked. On June 12, 1999, private complainant followed her.

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[5] Atty. Marilyn E. Hidalgo.

Supreme Court E-Library

"Florita confided the rape incidents involving private complainant to her co-workers who convinced her to file a case. With the help of a neighbor from Acao, Bauang, La Union, the incidents were reported to the police.

"Dr. Anne Nerissa S. Sanchez, a[n] obstetrician-gynecologist, examined private complainant at the Ilocos Training and Medical Center. Dr. Sanchez embodied her findings in a Medical Certificate which reads, in part:

'PELVIC EXAMINATION:

'Genitalia: x x x

'Hymen — with incomplete, healed laceration at the 10 & 2 o'clock positions.'"[6]

Version of the Defense

Appellant relates his version of the facts in this manner:

"For the defense, the accused was presented to testify and the following were adduced from his testimony, to wit:

"Florentino Quijano, Sr., 49 years old, married[,] welder and a resident of Baccuit Sur, Bauang La Union. He testified that there is no truth to the charges of four (4) counts of Rape filed by his daughter Leah against him. In the whole year of 1994, he was with his family at Acao, Bauang, La Union x x x there was no complaint or rape case filed against him as far as he can recall. In said year, his daughter Leah remains in their residence. She was still studying at that time and is free from leaving their residence anytime she wants to. In the year 1994, there was no instance wherein he quarreled with his wife nor any unusual incident that happened in their residence. He usually leave their residence for work at 7:00 o'clock in the morning and arrives at 7:00 o'clock in the evening and usually watched TV at night. In the succeeding years up to 1998, nothing unusual happened nor was there any complaint for rape filed against him by his daughter and during all those years from 1994 to 1998, there was no problem in the family and their relationship was harmonious.

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[6] Appellee's Brief, pp. 5-8; *rollo*, pp. 128-131; citations omitted. Signed by Solicitor General Simeon V. Marcelo, Assistant Solicitor General Nestor J. Ballacillo and Solicitor Tomas M. Navarro.

Supreme Court E-Library

"Accused further testified that in the year 1999 specifically on May 28, 1999, he was working with the B & J Angeles Lumber, [he left] their house at 7:00 o'clock in the morning and arrived home at 9:00 o'clock in the evening because he had an overtime work. When he arrived at home, his family (wife and children) were there. There was no unusual incident that happened particularly in the night of May 28, 1999. It was only when he was arrested in June 22, 1999 that he learned of the four (4) counts of rape filed by [his] daughter against him.

"He further testified that between May 28 to June 22, 1999, [his] daughter Leah asked permission from his wife to attend a dance party and never came back. They looked for her but to no avail, but he was told by his wife that Leah might have gone to her elder sister's place who was boarding then at San Fernando City. There was no truth to the allegations of his daughter Leah when she testified that he began raping her when she was still only seven (7) years old, because at that time he was assigned to different places. There is no truth also that he raped his other daughter Florita because she grew up with her grandmother and stayed with them only when she was already in high school. There is no truth as to the testimony of his wife that she was afraid of him because for all those twenty five (25) years that they have been living together, he never laid his hands on her. He denied having done those four (4) cases of rape filed against him. He does not know of any reason why his daughter filed those cases against him, except that he was very strict that he does not allow his daughter to attend dance parties and gatherings and another was that when Leah asked him that she wants to continue her studies and enroll in Hotel Restaurant Management, he told her to enroll the following year as he could not afford to send her to school, and he believed that some friends of his daughter might have coached her to file these cases against him."[7]

Ruling of the Trial Court

The RTC found no indication of falsehood in the testimony of Leah Quijano. Although her allegations of sexual abuse lacked details, the trial court held that this deficiency did not destroy her credibility. It ruled that the guilt of the accused had been established beyond reasonable doubt by the testimonies of

[7] Appellant's Brief, pp. 8-10; *rollo*, pp. 74-76; citations omitted. Signed by Atty. Pedro B. Baguilat, Jr. of the Public Attorney's Office.

Supreme Court E-Library

complainant, her sister and her mother; as well as by the results of her physical examination.

Hence, this automatic review before us.[8]

The Issues

Appellant assigns the following errors for our consideration:

"I

The trial court erred in finding accused-appellant guilty of four (4) counts of rape in Criminal Cases Nos. 2261, 2262, 2263 and 2264 despite the fact that the evidence presented by the prosecution are insufficient to prove the guilt of accused beyond reasonable doubt.

"II

The trial court erred in sentencing accused-appellant to death for the crime charged in Criminal Cases Nos. 2261, 2262, 2263 and 2264."[9]

In sum, the main issue is whether the prosecution's evidence sufficiently established appellant's guilt beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious; the prosecution evidence is sorely insufficient to inspire moral certainty.

Main Issue:
Sufficiency of the Prosecution's Evidence

Rape is committed when carnal knowledge of a woman is obtained under any of the following circumstances: (1) when force or intimidation is used, (2) when the woman is deprived of reason or is otherwise unconscious, or (3) when she is under twelve years of age.[10] Moreover, "under Article 335 of the Revised

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[8] This case was deemed submitted for resolution on March 22, 2002, upon receipt by this Court of appellee's Brief. Appellant's Brief was filed with this Court on September 5, 2001. No reply brief was submitted.

[9] Appellant's Brief, p. 1; *rollo*, pp. 67-68. Original in upper case.

[10] *People v. Gaorana*, 289 SCRA 652, April 27, 1998; *People v. Pili*, 351 Phil. 1046, April 15, 1998.

Supreme Court E-Library

Penal Code, x x x actual penetration of the female sex organ by the male sex organ is required as an element of rape. This penetration constitutes carnal knowledge, which is synonymous with sexual intercourse."[11]

The prosecution has the burden of establishing the presence of each of the elements of the crime charged. This responsibility it failed to discharge in the present case. On record are merely the following pieces of evidence: (1) the victim's conclusion that she was "raped,"[12] (2) the testimony of her mother and her sister that she was "abused," and (3) the medical finding that she had incomplete healed lacerations on her hymen. Whether taken singly or collectively, the foregoing circumstances do not prove rape beyond moral certainty.

Undoubtedly, "carnal knowledge or sexual intercourse is a must-element in the crime of rape."[13] In the case at bar, carnal knowledge between Leah and appellant was not established. The prosecution's evidence referred to some kind of abuse. But as to which kind she suffered is not clear.

On direct examination, she merely testified as follows:

"Q In 1994, where were you residing then?
A In Acao, Bauang, La Union, sir.

Q And who were your companions residing in Acao, Bauang, La Union?
A My family, sir.

Q And will you tell us who specifically among you in the family who were in Acao, Bauang, in 1994?
A My mother, sister and my brothers, sir.

Q All your brothers are residing there with you?
A Yes, sir.

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[11] *People v. Masalihit*, 360 Phil. 332, 342, December 14, 1998, per Bellosillo, *J.*

[12] TSN, February 8, 2000, p. 3.

[13] *People v. Masalihit, supra.*

Supreme Court E-Library

Q In what part of 1994 did you reside in Acao, Bauang?
A I cannot remember, sir.

Q Up to when did you reside in Acao, Bauang, La Union?
A In 1996, sir.

Q And while you were in Acao, Bauang, La Union, in 1994, how many times were you abused by your father?
A Many times, sir.

Q In a week, how many times more or less?
A Five times, sir.

Q And when did this [abuse] take place, what specific time of the day and night?
A In the morning or in the afternoon, sir.

Q And where did your father [abuse] you in this time of the day?
A In our bedroom, sir.

Q How many rooms does your house where you were staying in Acao have?
A One room only, sir.

Q At that time your father is allegedly abusing you in the house where you were residing, where is your mother?
A She is in the market, sir.

Q How about your brothers and sister, where are they at that time you were abused by your father?
A My sister was working and my brothers were sent out by my father.
Q You mentioned that you have been abused by your father since you were seven (7) years old up to sometime in May 1999 do you know if your mother was aware what your father was doing x x x to you?
A Yes, I was telling her."[14]

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[14] TSN, February 8, 2000, pp. 4-5.

Supreme Court E-Library

Even her mother and sister failed to elaborate on the alleged "abuse." Carnal knowledge cannot be sufficiently inferred from their paltry testimonies, which utterly failed to spell out exactly how appellant had abused complainant. Seemingly, the prosecution left it to the court's imagination to supply the vital details.

A conviction cannot be made to rest on imagination. The Constitution requires moral certainty or proof beyond reasonable doubt. The scant evidence on record cannot justify a leap to the conclusion that the "abuse" appellant perpetrated on Leah amounted to carnal knowledge under any of the three circumstances specified in Article 335 of the Revised Penal Code.

Admittedly, at the beginning of her direct testimony, she claimed to have been "raped" by appellant. However, what she meant when she used the word "raped" is not clear. In her Affidavit, she stated that when she was seven years old, her father had merely inserted his fingers into her vagina;[15] and when she was twelve, his penis. In court, however, she claimed that he started "raping" her when she was seven years old.

Hence, it is unclear whether Leah used the word *rape* in the same context as it was used in Article 335[16] of the Revised Penal Code — carnal knowledge with force or intimidation — or with a different meaning in mind. In 1994, inserting one or more fingers into a woman's vagina without her consent was not yet considered as rape. It was only in 1997 that the law on rape was expanded to include such act.

Furthermore, "[a] witness is not permitted to testify as to a conclusion of law."[17] Whether or not complainant was raped by appellant is the issue in this case. This question must be decided by the judge — not by Leah, her mother or her sister. As it is, she cannot foist on him her own conclusion that she was "raped."

Complainant's incompletely healed hymenal lacerations were likewise insufficient to prove beyond reasonable doubt the occurrence

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[15] Records, p. 3.

[16] The law on rape in force in 1994–the year when the rapes occurred, according to the Informations.

[17] *People v. De Guzman*, 333 Phil. 50, 68, December 2, 1996, per Davide Jr., *J.*

Supreme Court E-Library

of carnal knowledge. As admitted by the examining physician, such lacerations could have also been caused by the passing of blood clots during menstruation,[18] not necessarily by sexual intercourse.

The defense of denial proffered by appellant is not convincing. Nevertheless, considering that he is the accused and not the prosecutor, we do not see what else he could have posed during the trial, beyond a mere denial. It was not for him, but for the prosecution, to prove that he did not rape his daughter. "It is settled jurisprudence that in criminal cases the prosecution has the *onus probandi* in establishing the guilt of the accused. *Ei incumbit probatio qui dicit, non que negat, i.e.,* he who asserts, not he who denies, must prove."[19]

The Court does not guarantee that appellant did not rape his daughter. He may have done so, but the evidence on hand does not prove the charge beyond moral certainty. Hence, the Court has no choice but to acquit him on reasonable doubt. This recourse is required by the Constitution, which presumes that the appellant is innocent unless proven otherwise. The prosecution miserably failed to overturn this presumption of innocence.

WHEREFORE, the appeal is *GRANTED* and the assailed Decision is hereby *REVERSED* and *SET ASIDE*. Appellant Florentino Quijano Sr. is *ACQUITTED* on reasonable doubt. The director of the Bureau of Corrections is ordered to cause the immediate release of appellant, unless he is being lawfully held for another cause; and to inform the Court of the date of appellant's release, or the reasons for his continued confinement, within ten days from notice.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C. J., Bellosillo, Puno, Vitug, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and *Azcuna, JJ.*, concur.

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[18] TSN, February 29, 2000, p. 6.

[19] *People v. Masalihit, supra.*