Supreme Court E-Library

More significantly, the cardinal rule remains that the discretionary power to dismiss appeals or not must always be exercised wisely and prudently, never capriciously, with a view to substantial justice. (*Marquez vs. Court of Appeals*, 77 SCRA 527; *Gregorio vs. Court of Appeals*, 72 SCRA 124; *Cucio vs. Court of Appeals*, 57 SCRA 68; *Piedad vs. Batuyong*, 55 SCRA 763; *Limon vs. Candido*, 27 SCRA 1166).

WHEREFORE, respondent appellate court's resolutions dismissing petitioners' appeal are set aside and the case is remanded to it for further proceedings and disposition of the appeal on its merits. No pronouncement as to costs.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *Melencio Herrera JJ.*, concur.

SECOND DIVISION

[G.R. Nos. L-39367-69. February 28, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REMIGIO CONCHADA *Y* ASTRERA**, *accused appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT, ENTITLED TO THE HIGHEST RESPECT. — The Court has long been committed to the principle that the determination be a trial judge who could weigh and appraise the testimony as to the facts duly proved is entitled to the highest respect. unless it could be shown that he ignored or disregarded circumstances of weight or influence sufficient to call for a different finding.

Supreme Court E-Library

2. ID.; ID.; ID.; SUPREME COURT WILL NOT INTERFERE WITH JUDGMENT PASSING ON THE CREDIBILITY OF OPPOSING WITNESS. — In the event of a conflict in the testimony of the witnesses, the peculiar province of the trial court is to resolve the question of credibility, and, unless there is something in the record impeaching by fair interpretation the resolution of the trial court in relation to that question, the Supreme Court will assume that he acted fairly, justly, and legally in the exercise of that function.

3. CRIMINAL LAW; RAPE; ANY PENETRATION SUFFICES TO WARRANT CONVICTION. — Any penetration by the entry of the labia or lips of the female organ even without rupture of the hymen suffices to warrant conviction.

4. ID.; ID.; USE OF FORCE AND INTIMIDATION, NOT REQUIRED IN STATUTORY RAPE. — The fact that the complainant had made no outcry during the commission of the crime or immediately thereafter does not deserve serious consideration. In the rape of a girl below twelve years of age force or intimidation need not be present.

5. ID.; ID.; ID.; RATIONALE. — In providing for the statutory crime of rape, where the victim is a young girl of tender years, consent on her part is not a defense. The law is a reflection of the deep concern of the state for the well-being of the child. In at least two cases, *People v. Baylon*, L-35785 May 29, 1974 and *People v. Cawili*, L- 30543 July 15, 1975 it was noted that the concept of *parens patria* justifies such an approach in it penal laws.

APPEARANCES OF COUNSEL

Roman R. Mendioro for appellant.

Acting Solicitor General Hugo E. Gutierrez, Jr., Assistant Solicitor General Guillermo C. Nakar, Jr. and Solicitor Ma. Rosario Quetulio-Losa for appellee.

D E C I S I O N

FERNANDO, *J.*:

The law — and understandably so — looks with repugnance at the crime of rape, but never is the commission of such an offense attended with such infamy as when the victim is a girl

Supreme Court E-Library

of tender years. The predicament, therefore, in which appellant Remigio Conchada *y* Astrera found himself was far from enviable. He was accused of the crime of raping the complainant, then only eight years of age, in three separate complaints.[1] After trial, he was duly convicted, the penalty imposed being *reclusion perpetua* in each one of the above cases. Precisely because the sympathy of the Court is with the complainant, whose traumatic experience could have repercussions lasting in its effects, there is all the more reason for a strict and close scrutiny of the evidence to ascertain whether or not his guilt had been shown beyond reasonable doubt. Of that, we are convinced. The most rigorous appraisal of the evidence on record would not justify a reversal. We affirm.

As to L-39367, the brief for appellant summarized the evidence for the prosecution in this wise. It was sometime in the morning of January, 1974, that the accused Remigio Conchada, who was on the ground floor of the Luzonian Building, Lucena City, asked complainant Eden Lingcoran to go to the library, located at the fourth floor of the same building.[2] The pretext, according to her, was that she would be given a newspaper for her father.[3] Another girl, one Marilyn Albaciete, was with her.[4] Upon reaching the library, she was immediately taken to a place near the bookshelves where her panties were taken off.[5] Then appellant took off his pants and inserted his male organ into her private parts.[6] To make up for her lack of height, she was made to stand on a pile of newspapers, the *Balita*, about a foot thick, folded one on top of the other.[7] In that position, she was made to spread her legs about 1-½ feet apart.[8] The result according

---

[1] L-39367, L-39368 and L-39369.

[2] T.s.n., Session of May 17, 1974, 178.

[3] *Ibid.*, 177.

[4] *Ibid.*, Session of April 29, 1974, 83.

[5] *Ibid.*, 180.

[6] *Ibid.*, 181.

[7] *Ibid.*, 186; 188.

[8] *Ibid.*, 187.

Supreme Court E-Library

to her, was that her private parts became wet; after which, appellant moved his body back forth against her.[9] He wiped the wet parts of her thighs and legs; then gave her the newspaper, the *Bulletin*, which she brought to her father.[10] Complainant went downstairs where "Marilyn was waiting for me because the bag I have was in the possession of Marilyn."[11] Eden did not tell her parents that she was dragged by Conchada to the library nor what was done to her on that occasion.[12]

The brief for appellant summarizing the evidence of the prosecution in L-39368 admitted the existence of testimony to the effect that on the afternoon of February 14, 1974, during the celebration of the University week of the Luzonian Colleges, Romeo Conchada, a son of appellant informed Eden, who was one of the contestant in the spelling contest, that they would practice for the event. When they arrived at the library, appellant brought Eden behind bookshelves. She was abused anew sexually by appellant, who, after removing his trousers as well as her panties, succeeded in putting his male organ into her private parts. Complainant was again made to stand on a one-foot thick pile of *Balita* newspapers.[13] The testimony came from the complainant.

As to the third case against appellant, L-39369, his brief took due note of what had been testified to, namely, that on March 4, 1974, Eden Lingcoran, Marilyn Albaciete, and Romeo Conchada were sent by their teacher, one Ruperto Orinday, to the library of the Luzonian University, ostensibly for the purpose of being taught spelling by appellant, who was the librarian. They did so twice, the first time at about 10:30 and then at about 11:00 o'clock. Moreover, it was appellant who made the request, as shown by this letter: "March 4, 1974 Mr. Orinday,

---

[9] *Ibid.*, 183.

[10] *Ibid.*, 191.

[11] *Ibid.*

[12] *Ibid.*, 195.

[13] *Ibid.*, 88.

Supreme Court E-Library

Ipakidala mo riyan sa tatlong paparito, anak ni Pareng Joe at anak ni Insang Ador, iyong "spelling notebook" mo. "I'll compare it to my selected words. I'll wait until 11:00 A.M. *Pareng Remy.*"[14] The three students complied with the order. First, they read magazines, and later they were taught spelling by appellant, who once again took complainant behind the bookshelves and repeated the act of inserting his male organ inside her private parts. "After the intercourse, [appellant] wiped Eden's thighs and legs with a piece of rag."[15] When appellant was putting on his trousers, Elizabeth Lingcoran, mother of Eden, arrived at the library. That particular act, she witnessed. She was stunned, but she did not say anything. She just took complainant home, who, soon after, with tears in her eyes, told her of the sordid acts perpetrated on her person. What the brief for appellant failed to mention was that such narration came not only from complainant[16] but also from her mother, Elizabeth Lingcoran.[17] It was also corroborated in part by her classmate Marilyn Albaciete.[18]

Outside of the testimonial evidence of record, the lower court judge, Delia P. Medina, who wrote an exhaustive and carefully written decision of sixty-five pages, relied on the findings of Dr. Lucita D. Goyma, the resident physician who examined the complainant. This is her certification: "This is to certify that [Eden Lingcoran], age 8 years, female, student and a resident of Lucena City had been examined in this hospital on the above date. [Findings]: Body - no signs of external injury. Vulva - reddish all around. Hymen - open, 1-½ cm. in diameter, rounded, small laceration at 5 and 6 o'clock positions. Vagina admits one finger. Vaginal smear for presence spermatozoa - none seen."[19]

---

[14] Exhibit 2.

[15] Brief for Appellant, 7.

[16] T.s.n., Session of April 29, 1974, 67-81.

[17] *Ibid.*, 13-26; 45-63.

[18] T.s.n., Session of July 9, 1974, 3-15; 18-27.

[19] Exhibit C.

Supreme Court E-Library

To repeat, in view of the seriousness of the accusation and the severity of the penalty imposed, this Court took particular pains in the study of the records of the case. As set forth at the outset, nothing was elicited that would justify a reversal of the conviction.

1. The first fifty-seven pages of the appealed decision set forth the testimonies of both the prosecution and the defense. Thereafter, Judge Medina explained why she arrived at a finding of guilt. Insofar as the testimony of the complainant was concerned, this is what was stated in her decision: "The Court finds it quite difficult to disregard the direct, spontaneous, candid and consistent testimony of Eden Lingcoran, the 8-year-old offended party. It is highly extraordinary, if not improbable, for a girl of her age to concoct and fabricate or retain in her memory a concoction and fabrication of such a sordid event, which happened not only once but three times, without omitting a single material circumstance, such as the embrace and kisses of the accused, the pile of newspapers, the pain, the wetting of her thighs and legs, the wiping of said wetness by the accused, and above all, the act of the accused in inserting his penis into her private parts, the child being able to relate well and quite naturally at that, despite the rigid cross-examination, each and every detail of the incidents, including the sending out of accused's child to buy "*pansit,*" which apparently was the *modus* employed by the accused to discard a witness while he consummated his lustful desire. Not to be overlooked is the unswayed and unpretentious declarations of 9-year-old Marilyn Albaciete who corroborated Eden's testimony on some of the incidents that happened in the library on March 4, 1974."[20] The testimony of complainant's mother was appraised thus: "The Court finds it equally difficult to ignore the testimony of Eden's mother, Elizabeth Lingcoran, since it is certainly against the human nature and the ordinary course of things for a mother to sacrifice the honor, dignity, and the bright future of her daughter, who is so young, so lovely and intelligent, by exposing her to the shame and

---

[20] Decision of the lower court, 57-58.

Supreme Court E-Library

public scandal of this trial * * * It is unbelievable that to given vent to an alleged grudge against the accused, which certainly has not been satisfactorily established, Elizabeth would resort to a measure that would necessarily cover her own daughter with the infamous stigma of having been the victim of rape that would cause both of them a lifelong grief and embarrassment. There is no proof in the records that Elizabeth Lingcoran and her husband are so degenerated and wicked that they would sacrifice the future happiness of their own daughter to satisfy a personal urge for a petty vengeance * * *."[21] The appealed decision likewise took into consideration the testimony of Dr. Goyma, who was grilled in an intensive cross-examination, but whose findings survived the test of the most searching questions: "Likewise, quite significant are the findings and observations made by the doctor, an expert, who examined Eden and who corroborated the child's testimony in material points. The opening and laceration of Eden's hymen, the doctor declared, was abnormal for a girl of Eden's age. The reddening of her vulva "all around" added even more in making the doctor observe that such abnormal opening and laceration could have been caused by an attempt to have sexual intercourse with the child or by a male organ coming in contact with the vagina of Eden, notwithstanding the absence of spermatozoa."[22]

2. The first two assigned errors, namely, that the lower court erred in believing the testimony of Eden Lingcoran, and in not rejecting such testimony, may be discussed jointly. There is pertinence to this excerpt from *People v. Angcap*:[23] "Appellant would raise a question of credibility in the second error assigned. He would charge the trial court of 'giving more weight and credence to the testimony of the complaining witness than to that of the appellant.' He should realize that his plea for reversal does rest on a weak and infirm foundation. There is need to stress anew that the Court has long been committed to the

---

[21] *Ibid.*, 58-59.

[22] *Ibid.*, 59.

[23] L-28748, February 29, 1972, 43 SCRA 437.

Supreme Court E-Library

principle that the determination by a trial judge who could weigh and appraise the testimony as to the facts duly proved is entitled to the highest respect, unless it could be shown that he ignored or disregarded circumstances of weight or influence sufficient to call for a different finding. So it was announced by Justice Moreland in 1910 in the first case of consequence enunciating such a doctrine. As he pointed out, in the event of a conflict in the testimony of the witnesses, 'the peculiar province of the trial court is to resolve the question of credibility, and, unless there is something in the record impeaching by fair interpretation the resolution of the trial court in relation to that question, this court will assume that he acted fairly, justly, and legally in the exercise of that function.' So it has been since then. In a case reported in the latest volume of the Philippine Reports, Justice Paredes, speaking for this Court, succinctly stated 'that with respect to the credibility of witnesses, the trial court's findings and conclusions, command great respect and weight.' Its more usual formulation was also set forth by Justice Malcolm in these words: 'After everything is said and done, we come back, as we invariably do in cases of this nature, to a recognition of the rule that the Supreme Court will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record some fact or circumstances of weight and influence, which has been overlooked or the significance of which has been misinterpreted.' The three-page discussion in the brief for appellant could hardly make a dent in the appraisal made by the trial court of the competent and credible evidence of record. There could be no other conclusion then except to declare as bereft of merit this second assignment of error."[24] Since Angcap, there had been other decisions in prosecutions for rape, where such a doctrine we reiterated.[25]

---

[24] *Ibid.*, 443-445. The citation from Justice Moreland is found in *United States v. Pico*, 15 Phil. 549, 551; from Justice Paredes in *People v. Cristobal*, 110 Phil. 741, 747 (1960); and from *Justice Malcolm in People v. De Otero*, 51 Phil. 201, 209 (1927).

[25] Cf. *People v. Cudalina*, L-34969, April 29, 1975, 63 SCRA 499; *People v. Ordenio*, L-33829, Dec. 19, 1975, 68 SCRA 397; *People v. Sarile*,

Supreme Court E-Library

3. Appellant assigns as the third error the finding of the lower court that rape was committed. In the light of the testimony of the evidence for the prosecution, given credence by the trial court, it would necessarily follow that the proof offered sufficed for a judgment of conviction. The brief for appellant did not even discuss the evidence for the defense. The lower court did so. Thus: "On the other hand, the defense relies mainly on denial, the accused declaring that on February 14 and March 4, there were many persons inside the library; that Exhibit D, which is his sworn statement that he did not rape Eden Lingcoran but only toyed with her private parts using merely his fingers, on March 4, 1974, was signed by him without reading it intelligibly, although he admits that he was not threatened by the police officer who interrogated him on March 4 and neither was he threatened by Fiscal Romeo Dato, before whom he executed Exhibit D, to sign the same. Accused further claims that he was not even furnished with a copy of Exhibit D, but on cross-examination admitted that he did not ask for a copy. Accused contends that the charges against him are ill-motivated (*sic*) by revenge because the accused did not lend money to Eden's parents when they were borrowing from him."[26] When the respective testimonies of both the prosecution and the defense are compared, especially the certification of Dr. Goyma, the allegation that the lower court erred in finding that rape was committed on the three occasions charged in the complaint is shown to be bereft of any persuasive force. That is to run counter to the authoritative doctrines. In *People v. Oscar*,[27] this Court, through Justice Ostrand, relying on the American decisions, was quite emphatic in its holding that any penetration by the entry of the labia or lips of the female organ even without rupture of the hymen suffices to warrant conviction. So it was

---

L-37148, June 30, 1976, 71 SCRA 593; *People v. Velasco*, L-31922, Oct. 29, 1976, 73 SCRA 574; *People v. Villamala*, L-41312, July 29, 1977, 78 SCRA 145; *People v. Rapada*, L-31654, Nov. 22, 1977, 80 SCRA 273.

[26] Decision of the lower court, 56-57.

[27] 48 Phil. 527 (1925).

Supreme Court E-Library

held likewise in the following cases: *People v. Selfaison*,[28] *People v. Amores*,[29] and *People v. Ignacio*.[30]

4. Nor can there be any weight accorded to the observation made in the brief that complainant apparently failed to manifest any resistance to the sexual abuse committed on her person. Thus in *People v. De la Cruz*,[31] this Court, through Justice Aquino, stated: "Appellant's attempt to discredit complainant's story by observing that she had 'made no outcry' during the commission of the crime or immediately thereafter does not deserve serious consideration. In the rape of a girl below twelve years of age force or intimidation need not be present."[32] Again, through the same *ponente*, there is this holding in the subsequent case of *People v. Gonzales*: [33] "The crime committed by Gonzales is simple rape or rape without the attendance of any of the qualifying circumstances mentioned in Article 335 of the Revised Penal Code. Its basic element is the carnal knowledge of a girl below twelve years of age."[34]

5. That is all that needs to be said except perhaps to reiterate that in providing for the statutory crime of rape, where the victim is a young girl of tender years, consent on her part is not a defense. The law is a reflection of the deep concern of the state for the well-being of the child. In at least two cases, *People v. Baylon*[35] and *People v. Cawili*,[36] it was noted that the obligation of the state embraced in the concept of *parens patria* justifies such as approach in its penal laws.

---

[28] 110 Phil. 839 (1961).

[29] L-32996, August 21, 1974, 58 SCRA 505.

[30] L-35494, September 18, 1974, 60 SCRA 11.

[31] L-28810, March 27, 1974, 56 SCRA 84.

[32] *Ibid.*, 93.

[33] L-33926, July 31, 1974, 58 SCRA 265.

[34] *Ibid.*, 270.

[35] L-35785, May 29, 1974, 57 SCRA 114.

[36] L-30543, July 15, 1975, 65 SCRA 24.

Supreme Court E-Library

WHEREFORE, the appealed decision dated August 8, 1974 in Criminal Cases Nos. 753, 754 and 755 of the Court of First Instance of Quezon, Branch I, now respectively L-39367, L-39368 and L-39369, sentencing the accused to the penalty of *reclusion perpetua* in each one of them, is hereby affirmed. Costs against appellant.

Barredo, Antonio, Aquino, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-41107. February 28, 1979]

AMANDA L. VDA. DE DELA CRUZ, *ET AL.*, *petitioners*, *vs.* HON. COURT OF APPEALS, MARCELO ABAGA, MARGARITA D. JOSE, MARTINA D. JOSE, QUIRINO D. JOSE, TEOFILO D. JOSE, *ET AL.*, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; SUBSTITUTION OF PARTIES; APPLICABLE TO A COMPLAINT FOR EJECTMENT OF AGRICULTURAL LESSEES.** — The provisions of Rule 17, Sec. 3 of the Rules of Court which provides for substitution of parties in actions which survive are applicable to a complaint for ejectment of agricultural tenants, since an action is not extinguished on account of Sections 9, Rep. Act 1199 (Rep. Act 6389, Code of Agrarian Reforms), which provides in effect that in case of death or permanent incapacity of the agricultural lessee, the leasehold shall continue between the lessor and the persons enumerated in said section which include the descendants of the deceased.

2. **ID.; ID.; ID.; ID.; EFFECT OF LACK OF SUBSTITUTION.** — The continuance of a proceeding during the pendency of which a