

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO ALAMO, LEOPOLDO ARNALDO, TEODULO ROCELO, ROSADINIO BAÑARES, AND ROGELIO LOGRONIO, ACCUSED-APPELLANTS.

G.R. No. L-38401. June 25, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal from the decision of the Court of First Instance of Albay, 10th Judicial District, Branch III, convicting Leonardo Alamo, Leopoldo Arnaldo, Teodulo Rocelo, Rosadinio Bañares and Rogelio Logronio of the crime of multiple rape. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds the defendants Leonardo Alamo, Leopoldo Arnaldo, Teodulo Rocelo, Rosadinio Bañares and Rogelio Logronio guilty of rape and sentences each of them to reclusion perpetua; each to pay Eunice Fortuna Aragon the sum of P3,000.00 as moral damages and each to pay one-fifth of the costs. Credit the defendants with the time they have undergone preventive imprisonment."

The information dated December 11, 1972 against the five (5) accused based on the complaint filed by Armando Aragon for and in behalf of his 12-year old daughter, Eunice Aragon, charges:

"That on or about the 20th day of November 1972 in the City of Legaspi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of intimidation and force and with lewd designs, did then and there wilfully, unlawfully and feloniously help one another in having carnal knowledge, one after another, with one EUNICE FORTUNA ARAGON, against the latter's will.

"Contrary to law."

The prosecution's evidence is summarized in the People's Brief, as follows:

"At about 3:30 o'clock in the afternoon of November 20, 1972, Eunice Aragon and her 7-year old sister, Nancy, were at the Team Theater, Legaspi Port, Legaspi City, viewing the movie advertisements. An ice cream vendor, later identified as Rosadinio Bañares, approached them and offered ice cream. At first they refused the offer but when Bañares insisted and threatened them, they accepted the ice cream. Subsequently, Bañares told them to go to the nipa swamp at Bitano, Legaspi City the same time promising to give them P1.00. Again the girls refused. However, because of the threats of Bañares that if they did not go to the nipa swamp he would hurt them, the two girls fearfully obeyed him (pp. 4-7, tsn, May 16, 1973).

They walked to the nipa swamp. Eunice was ahead followed closely by her sister Nancy, and Bañares (pp. 21, 25-26, 55, tsn, May 16, 1973).

When they reached the nipa swamp, Bañares told the girls to enter a thicket but they refused, so Bañares pushed them inside (p. 7, tsn, Id.). Bañares then told Eunice to remove her panties. When she refused to do so, Bañares held her waist and removed them himself. At this juncture Eunice kept on struggling to free herself from his hold. Eunice then fell on her back. Immediately, Bañares placed himself on top of her, put out his penis and inserted it into her vagina. Eunice pushed Bañares but her efforts were futile. She could not scream

because Bañares gagged her mouth. During the sexual intercourse, Eunice felt pain on her waist. (pp. 8-9, 29-30, tsn, Id.).

After Bañares had satisfied her lust, he left. After a while, Eunice stood up and put on her panties. Not long thereafter, another man identified later as appellant Teodulo Rocelo appeared and pushed Eunice down causing her to fall on her back. Rocelo then took off his pants and removed her panties, and had sexual intercourse with her. Although she felt some pain while she was being criminally abused by Rocelo she did not say anything to him because she was afraid. After consummating his beastly desires, Rocelo threatened Eunice and told her not to talk about the incident to anybody (pp. 11-13, 33-35, tsn, Id.).

While Rocelo was having sexual intercourse with Eunice, another man, identified later as appellant Leonardo Alamo, was waiting outside the nipa swamp. When Rocelo left, he entered the nipa swamp and upon seeing Eunice, who at the time was still lying down, immediately placed himself on top of Eunice. Eunice struggled hard to free herself, but appellant Alamo pinned her down by holding her waist. Eunice cried. Said appellate consummated the sexual act with Eunice. Before leaving her, she was warned not to report the matter to her parents, otherwise she would be 'boxed' (pp. 13-15, tsn, Id.).

After appellant Alamo, came another man, later identified as appellant Rogelio Logronio arrived. Immediately said appellant placed himself on top of Eunice who was still lying down on her back. She told him to get out and kicked him with her right foot. However, Logronio succeeded in having carnal knowledge of her. Said appellant left after warning her not to tell anybody about the matter otherwise he would 'box' her (pp. 15-16, tsn, Id.).

Eunice then stood up. A few moments thereafter, another man, later identified as appellant Leopoldo Arnaldo, arrived and pushed her. Again she fell flat on her back. Arnaldo placed himself on top of her. Eunice pushed him and told him to go away. But appellant nevertheless succeeded in having sexual intercourse with her. Like his co-appellants, Arnaldo warned Eunice not to tell anybody of what happened (pp. 17-19, tsn, Id.).

After Leopoldo Arnaldo left, Eunice went home but did not report her harrowing experience to her parents because she was afraid (pp. 19-20, tsn, Id.).

While the case was pending appeal with Us, four (4) of the accused, namely, Leonardo Alamo, Leopoldo Arnaldo, Teodulo Rocelo and Rogelio Logronio, withdrew their appeal, which We allowed in Our resolution of December 17, 1976 (Rollo, p. 238) hence the judgment as to said accused has become final and executory. Only the appeal of the accused Rosadinio Bañares remains.

The said accused-appellant Bañares submits the following assignment of errors in his appeal:

1. The lower court erred in giving credence to the testimony of the alleged offended party when the same is saturated with inconsistencies and improbabilities;
2. The lower court erred in making a conclusion that threats and intimidation were employed by all the accused in succeeding to have sexual intercourse with the alleged offended party;
3. The lower court erred in not acquitting the accused from the charge against them.

The fact that there was sexual intercourse is not denied by accused-appellant. What this Court is called upon to decide is whether or not force or intimidation was used when the accused had sexual intercourse with the victim, so as to qualify the crime as rape. Such issue was also the issue raised before the trial court and said court ruled that rape was committed, there being force or intimidation in the consummation of the crime.

We find no reason to depart from the trial court's judgment of conviction. The appeal of the accused must fall. The weight of evidence to prove the guilt of the accused beyond reasonable doubt has been clearly shown by the prosecution.

The main thrust of accused-appellant's argument is that there was no force or intimidation employed on the girl and in fact the girl consented to have sexual intercourse with him and that it was the girl who asked P1.00 from him as consideration of the sexual cohabitation.

We find no merit in appellant's contention. The records are very clear that Eunice never consented to the sexual intercourse. That she was intimidated and forced by the accused so that she would submit to his lustful desires is clearly shown in her testimony, as follows:

"FISCAL AMISOLA

Q - All right, when you said he threatened you and your sister, what do you mean by that?

A - He told us not to tell anybody.

Q - When you were told not to tell anybody, what did you and your sister do, if any?

A - We got afraid.

Q - So after you were offered the ice cream and you accepted the same, what else happened, if any?

A - He told us to go to the nipa swamp and he promised us to give us P1.00.

Q - Did you agree to go to that nipa swamp?

A - No, sir.

Q - When you refused to go to the nipa swamp, what did Rosadinio Bañares do, if any?

A - He forced us to go there.

Q - Now, in what manner did he force you?

A - He told us that if we will not go to the nipa swamp he would hurt us.

Q - So because of the threats of Rosadinio Bañares, did you go to the nipa swamp?

A - Yes, sir.

Q - Now, this nipa swamp where is this situated?

A - At Bitano, Legazpi City.

Q - All right, when you were already at that nipa swamp at Bitano, Legazpi City, what happened, if any?

A - He told us to enter the thickness of the nipa swamp but we refused.

COURT

What did she say in Bicol?

COURT INTERPRETER

Pinaralaog kami sa manipa.

COURT

Q - How could it be done?

A - By pulling us, your Honor.

Q - How would you enter the nipa swamp, that is what the Court wants to know?

A - There was a way in going inside the thickness of the nipa swamp. We were able to get in by pushing us, your Honor.

COURT

Proceed.

FISCAL AMASOLA

Q - What happened after you were forced to enter the thickness of that nipa swamp?

A - He told me to remove my panties.

Q - When you were told to remove your panties, did you remove your panties?

A - No, sir.

Q - Now, when you refused to remove your panties, what did Rosadinio Bañares do, if any?

A - It was Rosadinio Bañares who removed my panties. I told him not to remove my panties.

Q - When you told Rosadinio Bañares not to remove your panties, what did you do, if any?

A - I struggled myself to free from Rosadinio Bañares.

Q - After you struggled to free yourself from Rosadinio Bañares, what else happened, if any?

A - He held me.

Q - In what part of your body were you held by Rosadinio Bañares?

A - On my waist.

Q - What happened to you when you were held by Rosadinio Bañares?

A - I told him to get out of me but he refused.

Q - After you were held by Rosadinio Bañares, what else happened, if any?

A - I fell facing upward and he placed himself on top of me.

Q - When Rosadinio Bañares placed himself on top of you, what else happened or what....

COURT

Q - You fell on watery or dried soil?

A - Dried, your Honor.

COURT

Proceed.

FISCAL AMASOLA

Q - or what did Rosadinio Bañares do?

A - He put out his penis.

Q - And what did he do with his penis?

A - He inserted it into my vagina.

Q - When Rosadinio Bañares inserted his penis into your vagina, what did you do?

A - I pushed him but he refused to get out." (TSN, May 16, 1973, pp. 6-9)

Considering the tender age of the complainant who was then only 12 years old at the time of the commission of the offense, We hold that the force employed by the accused-appellant as narrated in her testimony above-quoted was sufficient to instill fear in her, compelling her to go with him to the swamp and there submit to the lustful desires of the accused after she failed in her struggle to free and remove herself from him who held her at the waist, causing her to fall to the ground whereupon he was able to insert his penis in her private parts, thus consummating the sexual act with her. This Court's ruling, applied in many cases of rape, that "it is not necessary that the force employed against the complaining woman in rape be as great or of such character as will not be resisted. It is sufficient that the force used is sufficient to consummate the culprit's purpose of copulating with the offended woman" (People vs. Savellano, 57 SCRA 320, citing U.S. vs. Villarosa, 4 Phil. 434, 437 cited in 52 C.J. 1018, note 7; Decision of Supreme Court of Spain dated May 14, 1878, 3 Viada,Codigo Penal 452; II Hidalgo Codigo Penal 302). The force or violence necessary in rape is naturally a relative term, depending on the age, size and strength of the parties and their relation to each other (7 C.J.S. 475), is specifically applicable in the case at bar. We reiterate it here, as We recently applied it in the case of People vs. Buenaventura Baylon, G.R. No. 56877, promulgated April 27, 1984.

We have indicated earlier that four (4) of the other accused, namely Leonardo Alamo, Leopoldo Arnaldo, Teodulo Rocelo, and Rogelio Logronio, withdrew their appeal, thereby rendering their conviction final and executory. This fact of withdrawal must have been prompted by a strong sense of guilt and repentance, and upon a realization that the evidence of the prosecution is overwhelming, and that of the defense, weak in the extreme. (People vs. Carreon y Viray, 99 SCRA 473).

Appellant claims that it was the complainant who asked P1.00 from him and in return submitted her body voluntarily to him. This claim which is stoutly denied by the complainant is not only flimsy but also preposterous and outrageous for it adds insult to injury. No sane and sensible man will justify his lust upon a tender child of 12 by paying her the measly sum of P1.00 unless he is himself so corrupt in his life and debased in his moral virtues. There is no showing that the complainant girl belongs to or practices the so-called oldest profession and even so, no prostitute, however young or aged, sells her flesh as cheap as that.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the judgment of conviction rendered by the lower court finding the accused-appellant Rosadinio Bañares guilty of rape and sentencing him to imprisonment of reclusion perpetua and to pay Eunice Fortuna Aragon the amount of Three Thousand Pesos as moral damages is hereby **AFFIRMED**.

Cost de oficio.

SO ORDERED.

Makasiar, (Chairman), Aquino, Escolin, and Cuevas, JJ., concur.

Concepcion, Jr., and Abad Santos, JJ., concur that the damages should be increased to P30,000.

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