

DOMINGO M. LOPEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. L-47469. December 29, 1978

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals in CA-G.R. No. 17957-CR entitled "People of the Philippines, Plaintiff-Appellee, versus, Domingo Lopez y Mendiola, Accused-Appellant", convicting the petitioner of the crime of attempted rape.[1]

The grounds for review are:

"1. THE DECISION PROMULGATED BY THE HONORABLE COURT OF APPEALS ON AUGUST 25, 1977 AFFIRMING, WITH MODIFICATIONS, THE CONVICTION OF THE PETITIONER (ACCUSED-APPELLANT THEREIN) IN CA-G. R. NO. 17957-CR MUST BE REVERSED, BECAUSE THE EVIDENCE FOR THE PROSECUTION IS WEAK AND THE GUILT OF THE PETITIONER WAS NOT PROVEN BEYOND REASONABLE DOUBT; AND

2. THE HONORABLE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT, OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT, BECAUSE ASSUMING WITHOUT ADMITTING THAT THE FINDINGS OF FACTS OF THE COURT OF APPEALS ARE CORRECT, THE CIRCUMSTANCES DO NOT CONSTITUTE ATTEMPTED RAPE, BUT THE CRIME COMMITTED, IF ANY, IS AT MOST A DIFFERENT OFFENSE."[2]

The evidence of the prosecution of the alleged attempted rape consisted mainly of the testimony of the complainant, Yolanda Perez.

Yolanda Perez averred that the accused, Domingo Lopez, had been courting her for sometime; that when he first proposed to her, she did not answer him; that later she accepted him and they became sweethearts; that, however, she later broke up their relationship allegedly because Lopez was too possessive and even wanted Yolanda to stop studying lest she leave him the moment she finished her studies, hence, Lopez wanted an early marriage; that in the morning of June 3, 1972, Yolanda Perez went to the Regina Carmeli College in Barasoain, Malolos, Bulacan, to seek the assistance of Sister Annabel so that Yolanda could enter the convent to continue her studies there; that failing to see Sister Annabel, Yolanda decided to go to Manila to look for her; that Yolanda boarded a jeep and she noticed the accused, Domingo Lopez, seated on the front seat of the vehicle; that Lopez told her that he had been looking for her that morning; that when the jeepney reached the Bonifacio Monument in Caloocan City, Yolanda alighted and waited for a taxi to take her to La Consolacion College where she would look for Sister

Annabel; that the accused who followed Yolanda, volunteered to accompany her to La Consolacion College and called for a cab; that the accused rode with Yolanda and inside the taxi, he invited Yolanda to drop by in the residence of his brother or sister in Pasig which was near the La Consolacion College; that arriving in Pasig, Yolanda and Lopez entered the house which looked like an apartment where Lopez invited Yolanda to go upstairs; that Yolanda went with him upstairs and they entered an open room with a bed; that Lopez allegedly warned Yolanda not to create scandal and poked his gun at her; that Lopez told Yolanda that as soon as he had succeeded in taking advantage of her womanhood, she could no longer refuse him; that thereupon, Lopez allegedly proceeded to abuse Yolanda, kissing her, pulling her hair and forcing her to lie down; that Yolanda fought back with her hands and feet; that she pressed her thighs closer together but Lopez kept pulling them apart and placing his knees in between her legs; that when Yolanda grew tired and weak, Lopez succeeded in removing Yolanda's panties and he tried to insert his penis inside her vagina; that she felt something warm on her private part and sensed that she had gotten wet; that Yolanda cried and shouted but she could not be heard because the appellant turned on the sound volume of the radio aloud; that Lopez allegedly pointed to Yolanda the wet spot on the bed and told her that she was no longer a virgin and could no longer refuse to marry him; that she saw the inscription "Pasig View Motel" on the bed and she realized that they were inside a motel; that before leaving the motel, Lopez warned Yolanda not to tell anybody about the incident; that they rode in a taxi and proceeded to the house of Atty. & Mrs. Narag in Caloocan City; that while they were in the Narag house, Lopez made it appear that they had eloped but Yolanda informed Atty. Narag, brother-in-law of Lopez, that she was forced to go with the accused; that Atty. Narag advised Yolanda not to tell anyone about the incident considering that the same had already happened and said that he would prepare the necessary papers for their wedding; that in the house of Atty. Narag, Lopez brought Yolanda into a room and tried to molest her again; that Yolanda shouted and fought back; that Yolanda told them that all she wanted was to be back in her home at Paombong, Bulacan, and she did not want the papers to be prepared in their house; that, however, she promised not to tell anybody of the incident and not to cause any scandal; that because of this promise, Yolanda was allowed to go home to Paombong, Bulacan; that she rode in a car with Domingo Lopez, his brother Vito, the driver and a woman named Christy; that Yolanda requested the group that she be brought to her house at Paombong, but instead she was taken to Malolos and brought by a policeman to Malolos Town Hall where she was interviewed; that her interview was recorded in the police blotter "Exhibit D"; that then Mayor de la Cruz of Paombong, Bulacan, arrived and accompanied Yolanda to her house in a jeep; that upon arriving home, Yolanda cried hard and told her father that Domingo Lopez had taken advantage of her (pinagsamantalahan); that overcome by the ordeal, Yolanda allegedly lost consciousness and when she regained her senses, she noticed the presence of Dr. Leonardo Tobias; that Dr. Tobias conducted an examination of Yolanda in her house and issued the following medical certificate, Exhibit "C":

"Republic of the Philippines
Department of Health
Field Operations
Regional Health Office No. 3
Rural Health Unit
Paombong, Bulacan

June 5, 1972

TO WHOM IT MAY CONCERN:

This is to certify that Miss Yolanda C. Perez, 21 years of age, single and residing at Sto. Niño, Paombong, Bulacan was examined by the undersigned last June 4, 1972 at 7:00 a.m. of the following:

- Hematoma, 1 x 1 distal 3rd leg, left lateral
- Hematoma, 1 x 1 distal 3rd leg, right anterior
- Hematoma, 1 x 2 thigh bilateral middle 3rd medial aspects
- Complaining of pain arm bilateral

That in the opinion of the undersigned the following lesions may heal from 12 to 14 days barring complications.

(Sgd.) LEONARDO P. TOBIAS, MD
Municipal Health Officer

NOTE: Perineal Examination to be performed by the NBI as per patient's request.

(Sgd.) YOLANDA C. PEREZ
June 5, 1972"[3]

It appears that on June 6, 1972, Yolanda went to the National Bureau of Investigation and submitted to another examination. Dr. Bienvenido O. Muñoz, Medico-Legal Officer of said Bureau, conducted the examination and issued a medical certificate, Exhibit "B", which in part reads:

"xxx xxx xxx

PHYSICAL EXAMINATION:

Height: 5'2" Weight: 93 lbs.

Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.

Breasts, fully developed, hemispherical and firm. Areolae, light brown, 3.0 cm. in diameter. Nipples, light brown, protruding, 0.9 cm. in diameter.

xxx xxx xxx

INJURIES: Contusions: dark blue: 3.0 x 2.0 cms., lower third, posterolateral aspect, leg, left; 2.0 x 1.0 cm., lower third, lateral aspect, thigh, left.

EXAMINATION:

Pubic hairs, fully grown and abundant. Labia Majora, gaping. Labia minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish. Hymen, intact, narrow, thick and distensible. Hymenal orifice, annular and admits a tube 2.5 cm. in diameter with moderate resistance. Rugosities, prominent and vaginal walls, tight.

xxx xxx xxx

CONCLUSIONS:

1. The above described physical injuries were noted on the body of the subject at the time of examination, age of which is compatible with the alleged date of commission.

2. She could have vulvar coitus only.

Respectfully submitted by:

(Sgd.) BIENVENIDO O. MUÑOZ, M.D.
Medico Legal Officer

NOTED:

(Sgd.) ERNESTO G. BRION, M.D.
Assistant Director

/jgvillanueva

110.054-p. 5817

NOTED:

(Sgd.) LORENZO A. SUNICO

Deputy Director for Technical Services"[4]

The version of the petitioner, Domingo M. Lopez, is summarized by the trial court thus:

"Testifying for and in his own behalf, accused Domingo Lopez y Mendiola, stated that he met Yolanda Perez for the first time on a Good Friday in the year 1972 while he was driving a jeep. He invited Yolanda and her companions to take them home and the latter consented. According to him, there was no need for him to court Yolanda because the first time they met, she already consented for him to touch her thigh everytime he shift the gear of the jeep he was then driving. He claimed that the statement of Yolanda that she accepted his proposal because she was afraid he might die is not true because he is in good health. He declared also that he was prepared to marry her but he changed his mind when she filed the complaint against him. The other reasons why he changed his mind, according to him, was when Yolanda and her father were asking so many things from him, such as for him to have the Perez house reconverted into two story house, for him to install sewing machines, for the manufacture of baby dresses at the lower portion of their house, and for him to leave his mother the moment he and Yolanda got married. He declared that he never asked Yolanda to write a dedication at the back of her picture (Exh. '8'), claiming that the first time he noticed such dedication was when he handed the picture of Yolanda to his counsel. He denied he is the jealous type and that he asked Yolanda to stop studying because according to him at that time Yolanda was no longer studying considering that she was already working. He further stated that when he celebrated his birthday in 1972, Yolanda suggested to him, through her note (Exh. '4') that her grandmother be invited; that during that occasion, he had the opportunity to be with Yolanda in going to Sta. Cruz Beach. He continued with his testimony by denying having followed Yolanda in the morning of June 3, 1972. He claimed it was Yolanda who called him by telephone, telling him to meet her at the Papers Restaurant in Malolos, Bulacan, which is the place where they usually meet. After meeting her at the Papers Restaurant on that date, they proceeded to the Bonifacio Monument in Caloocan City, arriving thereat at about 12:00 o'clock noon. They had their lunch at the Jack's Restaurant, during which occasion, Yolanda informed him that she was scolded by her parents and that she would like the two of them to elope. He told her that he was not yet prepared and thereafter he left her. He proceeded to Sta. Cruz, Manila, and entered a moviehouse. At that time, according to him, Yolanda was carrying a doll and a baggage which contained some clothes. He also denied having taken Yolanda to the Pasig View Motel on that day and thereafter raped her with the use of his gun because according to him, if it is really true, only her eyes would have remained unmarked. He further recounted that later on that date, June 3, his brother Liberato went to their house in Paombong, Bulacan, and informed him that Yolanda was creating a scandal in Liberato's house in Caloocan. They proceeded to Caloocan City, arriving thereat at about 7:00 o'clock in the evening. He saw Yolanda and he promised he will take her home. That very same evening, he, his brother, a nephew and a niece brought Yolanda to Malolos and after she had taken a tricycle and having seen her went upstairs of her house, they left the place. The following day, he went to see the parents of Yolanda to ask her hand in marriage but he later changed his mind when Yolanda and her father demanded so many things from him. He added that on that occasion when he went to the residence of Yolanda, her father allowed him to enter the room of Yolanda and while inside the room, Yolanda leaned on his breast and informed him that she was maltreated by her father for coming home late the previous evening. He further declared that the complaint filed against him in the Municipal Court of Pasig, Rizal is merely a frame up."[5]

The only issue is whether under the facts of record, the petitioner is guilty of attempted rape.

It is true that the testimony of a single witness may be sufficient to produce conviction if it appears to be trustworthy and reliable.[6] In rape cases, the complainant's testimony is subject to a thorough scrutiny. The reason for this is that crimes against chastity, by their very nature, usually involve only two persons - the complainant and the offender. As a consequence, conviction or acquittal of the accused depends almost entirely on the credibility of the complainant's testimony. Hence, the courts examine with the greatest care the complainant's story and subject it to a thorough scrutiny to determine its veracity in the light of human nature and experience.[7]

The testimony of the complainant, Yolanda Perez, is not only erratic but conflicting. She has a tendency to exaggerate and prevaricate.

It was with reluctance that the complainant admitted that she and the accused, Lopez were sweethearts. She even averred that they were sweethearts only in name. However, her letters to the accused and the dedication she wrote on her picture given to him show that they were really sweethearts, not only in name but in fact.

Yolanda Perez claimed that her meeting with Lopez in Malolos on June 3, 1972 was coincidental. She said that when she boarded the jeepney she saw the accused Lopez sitting on the front seat thereof. And yet there is evidence that they boarded the jeepney together. This supports the claim of the accused that it was the complainant who invited him to go with her to Manila on that date.

Yolanda said that she did not love or like Lopez, but she rode with him in a taxi allegedly to go to La Consolacion College in Pasig.

At the preliminary investigation of the case conducted on November 24, 1972, Yolanda declared that she and the accused arrived at the Pasig View Motel at about 2:00 o'clock in the afternoon of June 3, 1972 and stayed there for about four (4) hours until 6:00 o'clock that afternoon.[8]

The declaration of Yolanda that during the time that they were in the motel the accused abused her, pulled her hair and repeatedly hit her thighs with his fist is not supported by the physical evidence. The medical certificates show that Yolanda sustained only hematoma or contusion on the left leg. Said injury could have been caused by the leg bumping against a hard object. No other injury on the body of Yolanda Perez was noted in the medical certificates issued by Dr. Leonardo P. Tobias, Municipal Health Officer of Paombong, Bulacan, and Dr. Bienvenido O. Muñoz, Medico-Legal Officer of the NBI. If the accused were really intent on having sexual intercourse with Yolanda by force, he could have easily succeeded in doing so. A man who is bent on raping a woman will not just hurt her thighs. He will most likely hold her private parts and breasts, leaving physical injuries in the process. In the instant case, the medical certificates reveal that the hymen of Yolanda is intact and no laceration or injury on the private parts were noted. Even if the accused failed to insert his penis inside the vagina of the complainant, certainly his fingers would have left some kind of injury on her private parts. The claim that force was employed is not borne out by an appraisal of the evidence of record.[9]

The version of the complainant on what the accused allegedly did to her in the motel is conflicting. At first, she said that the accused inserted his penis into her vagina. Indeed, in the sworn criminal complaint she signed, she alleged that the accused "with lewd designs, by means of violence and intimidation and armed with a gun, did then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, against the latter's will and consent." [10] Later the complainant declared that the accused merely tried to insert his penis into her vagina. This contradiction is important because it reveals the unreliability of the complainant as a witness.

It is significant that when the complainant reported to the police at Malolos, Bulacan what happened to her, she alleged that she was abducted by the accused at about 10:00 o'clock in the morning of June 3, 1972 and that the accused left her after she was brought to Caloocan City. The police blotter of June 3, 1972 (Exhibit "D" also Exhibit "1") contains the following entry:

"0200 Hrs. One YOLANDA PEREZ Y CRUZ, 21 yrs. of Sto. Niño, Paombong, Bulacan complained to this office that Domingo Lopez of San Isidro, Paombong, Bulacan abducted her from Paombong at around 1000 hrs. 3 June 72. Perez also alleged that Lopez left her after she was brought at Caloocan City. Refer to Case No. 72-000484 rdf/15." [11]

It is difficult to understand why the complainant did not report to the police at Malolos that she had been raped by the accused on that day in a motel in Pasig. No matter how distraught the complainant might have been as a result of her experience, certainly what was uppermost in her mind was her having been raped by the accused on June 3, 1972 at a motel in Pasig. Her statement that she was abducted and later left by Lopez upon arrival in Caloocan City is contradicted by the testimony of the complainant. The Court of Appeals found as a fact that Yolanda and the accused were sweethearts and that Lopez, the accused, wanted an early marriage with the complainant. The accused, therefore, could not have abducted the complainant on June 3, 1972 when they happened to ride together from Malolos on a jeep. He had no lewd designs on Yolanda.

Again, Yolanda's statement to the police as reflected in the blotter that she was left in Caloocan City is belied by the very evidence of the prosecution. The Court of Appeals found that from the house of Atty. Narag, the complainant was allowed to go home to Paombong, Bulacan; that she rode in a car with the accused, his brother Vito, the driver and a woman named Christy who had taken pity on her; that Yolanda requested the group that she be brought to her house at Paombong; and that instead she was taken to Malolos and brought by a policeman to Malolos Town Hall where she was interviewed. This finding of the Court of Appeals contradicts the entry in the blotter of the Malolos police that according to the complainant she was left by the accused upon arrival at Caloocan City.

There are other inconsistencies in the testimony of the complainant which render her testimony more incredible.

In view of the foregoing, there are valid reasons to reject the testimony of Yolanda Perez that the accused had attempted to rape her in the Pasig View Motel on June 3, 1972.

WHEREFORE, the decision appealed from in CA-G.R. No. 17957-CR entitled "People of the Philippines, Plaintiff-Appellee, versus, Domingo Lopez y Mendiola, Accused-Appellant" is hereby reversed and the petitioner, Domingo M. Lopez, is ACQUITTED of the crime charged in the complaint, with costs de officio.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Santos, and Guerrero, JJ., concur.

[1] Decision penned by Justice Ricardo C. Puno and concurred in by Justice Rafael C. Climaco and Justice Guardson R. Lood, Rollo, pp. 21-47.

[2] Petition, Rollo, p. 11.

[3] Rollo, pp. 27-28.

[4] Rollo, pp. 28-29.

[5] Rollo, pp. 29-31.

[6] People vs. Maba-unag, 79 SCRA 32.

[7] People vs. Quiazon, 78 SCRA 513.

[8] Memorandum of Petitioner, Rollo, p. 127.

[9] People vs. Godoy, 72 SCRA 69.

[10] Rollo, p. 21.

[11] Decision, Court of Appeals, Rollo, p. 36.

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