

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CLEMENTE GANADO, DEFENDANT-APPELLANT.

G.R. No. L-37935. August 31, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

This is a case of rape. The Court of First Instance of Nueva Vizcaya, Branch I, convicted the accused Clemente Ganado in Criminal Case No. 23 and sentenced him "to suffer the penalty of life imprisonment, with the accessories of the law, to indemnify the offended party in the amount of P5,000.00 for moral damages, without subsidiary imprisonment in case of insolvency and to pay the costs."

The testimony on which the finding of guilt was based did show that about 9:00 in the evening of December 10, 1969, Concordia Estabillo, 27 years old, was lying down on the floor of their house at Barrio Wacal, Solano, Nueva Vizcaya, together with her three children, namely: Fernando, 7 years old; Antonio, 4 years old; and Paulino, Jr., 2 years old; and her 12-year old sister-in-law, Lolita Estabillo. Complainant's husband was away, having gone to harvest palay in Isabela since November 12, 1969.

That evening, December 10, 1969, the accused Clemente Ganado entered the house of the complainant who was able to recognize him by the light of a kerosene lamp, about two yards away from her. This light, the accused put off and, immediately thereafter, he held and went on top of the complainant who was then lying flat on her back, very much frightened. The accused used his right hand in holding a scythe pointed at her breast while his left hand embraced and held her neck. The complainant resisted and took hold of the scythe pointed at her breast and this injured her finger. Her blouse and panties were torn as they were kicked downward by the accused who succeeded in having sexual intercourse with her.

After the accused had left, complainant began shouting for help from her neighbors and when no one came she went to Julita dela Cruz whose house was some seven meters away.

The testimony of Concordia Estabillo was corroborated by her sister-in-law, the twelve-year old Lolita Estabillo. She saw the accused grab, embrace and go on top of the complainant. She saw the face of the accused by the light of the kerosene lamp which was about three yards away. She knew the accused, he being a neighbor. She could not shout for help when the accused and complainant were struggling, because she was afraid. The children were awakened by the struggle and all were crying.

The next day, December 11, 1969, about 7:00 in the morning, the complainant went to report the matter to the Barrio Captain who, however, was not at home. She then went to her uncle Esperidion Duro who accompanied her to the police at Solano town proper.

She was investigated and after she had signed the complaint, she was medically examined at the Provincial Hospital at Bayombong by Dr. Gaudencio Acosta.

The prosecution also presented Julita dela Cruz who testified that about past nine o'clock in the evening of

December 10, 1969 she heard the complainant's shouts while one of the children screamed for help. Moments later, the complainant and her children arrived at her (Julita's) house, afraid and scared. Concordia narrated to her that Clemente Ganado went up their house and abused her.

The medical certificate issued by Dr. Acosta enumerated his findings on the complainant, as follows:

"Physical Injuries:

1. INCISED WOUND, involving skin, right forefingers.
2. PUNCTURED WOUND, mid-sternum between the mammary region.

Vaginal smear - Negative for spermatozoa

"Conclusion:

1. Physical injuries were noted on the person of Concordia Estabillo.
2. Under normal condition and with-out subsequent complication and or deeper involvement but not clinically apparent at the time of examination the described physical injuries will require medical attendance not more than 9 days."

The defense is alibi. Accused-appellant Ganado alleged that at the time of the incident in question he was in Barrio Aggub, Solano, attending the wake of his mother-in-law, who died on December 10, 1969. He left his residence at Bo. Wacal in the morning of December 8, together with his wife and children. It was only on December 13, 1969 when he returned to Wacal to get some papayas to serve as food for the people who were attending the vigil of his mother-in-law. On the way he was arrested in connection with the case at bar.

Rodolfo Dumalanta and Remedios Parucha testified that the accused and his wife, Flocerfida Doles, were in the house of Anunciacion Antolin in Bo. Aggub, Solano, Nueva Vizcaya because the latter was very sick, as in fact she died on December 10, 1969; that they saw the accused in that house every evening from December 8 to December 12, 1969.

The defense also presented one Rosalina Valdez who declared that she was at the house of Julita dela Cruz that night of December 10, 1969 when Concordia Estabillo arrived. Concordia was complaining that a man she was not able to recognize because there was no light went up their house; that when the man went near her she shouted and this made him jump out of the window; that her companions in the house did not see the man because they were all asleep.

Ganado contends that the trial court erred: (1) in not finding absence of violence and resistance; (2) in refusing to take cognizance of the serious and vital contradictions of the prosecution witnesses, namely, the complainant and her sister-in-law, as well as the inherent improbability and physical impossibility of how the crime was committed; (3) in refusing to appreciate the insufficiency of evidence with respect to the identity of the accused; and, (5) in not acquitting the defendant-appellant.

The medical certificate, Exhibit D, shows the injuries sustained by the complainant, to wit: (1) incised wound in the right forefingers; and, (2) punctured wound between the breast. Dr. Acosta testified that both wounds could have been produced by a scythe. This unbiased evidence from the doctor corroborates the testimonies of the complainant and her twelve-year old sister-in-law as to how the accused, armed with a scythe, grabbed the complainant and abused her after a struggle. The brute force employed by the accused upon the hapless complainant before raping her and against her will could be no other than violence. In the case of *People vs. Eguac*, 80 SCRA 665, this Court held that "in order to consider the existence of the crime of rape it is not

necessary that the force employed in accomplishing it to be so great or of such character as could not be resisted; it is only necessary that the force used by the guilty party be sufficient to consummate the purpose which he had in view." In the case at bar, it is quite obvious that the complainant was subjected to physical force.

With respect to the alleged inconsistency in the testimonies of the complainant and her sister-in-law, suffice it to say that discrepancies in the testimonies of witnesses, which refer to minor details and are not of sufficient magnitude as to denote a deliberate intent to utter falsehoods, show that there had been no coaching. It is natural that two or more persons witnessing the same occurrence are likely to disagree in the narration of events. Inconsistency in the testimonies of witnesses, if only in minor details, reinforces rather than weakens their credibility, for it is usual that witnesses to a stirring event would see differently some details of a startling occurrence (*People vs. Garcia*, 18 SCRA 197).

And, contrary to appellant's contention, We find no contradiction in complainant's testimony that he made a "discharge" inside her vagina and the doctor's testimony that he found no spermatozoa in her vaginal canal. Complainant was medically examined the following day and it is possible that she washed her private parts sometime after the incident and before the examination if only to avoid pregnancy. At any rate, the absence of male spermatozoa is not incompatible with the consummation of the crime of rape. The absence of spermatozoa does not disprove the consummation of rape, the important consideration being not the emission of semen but penetration (*People vs. Jose*, 37 SCRA 450). In the consummation of the crime of rape neither perfect penetration nor rupture of the hymen are essential (*People vs. Oscar*, 48 Phil. 527).

Likewise, there is no merit in the contention that complainant was not able to identify the accused. There was light coming from the kerosene lamp and, aside from the fact that they were neighbors, it is a natural reaction of victims of criminal violence to strive to know the identity of their assailants. The manner in which the crime was committed creates a lasting impression which cannot easily be erased in their memories (*People vs. Selfaison*, 1 SCRA 235). On this point, the trial court found herein appellant to have been positively recognized by the complainant and her twelve-year old sister-in-law. Quoting from the decision of *People vs. Villamala*, 78 SCRA 145, this Court held that "on the question of the credence to which the conflicting versions of the prosecution and defense are entitled, the answer given by the trial court is generally viewed as correct and thus entitled to the highest respect." Besides, it has not been shown that complainant, a barriomate of the accused, had evil motive to charge him of the grave crime of rape. It is hard to believe that a woman from the barrio, married and with children, would publicly admit that she had been criminally abused, unless that is the truth.

On the other hand, the defense of alibi cannot be sustained in the face of positive identification of the accused. Assuming that as early as December 8, 1969 appellant and his family went to stay in the house of his mother-in-law in Barrio Aggub which is about seven kilo-meters from Barrio Wacal, he could have gone easily to Wacal in the evening of December 8 and then returned immediately to Aggub. It is not enough to prove that the accused was somewhere else when the crime was committed, but he must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time it was committed (*People vs. Cortez, et al.* 57 SCRA 308).

The penalty of reclusion perpetua imposed by the trial court is in accordance with Article 335 of the Revised Penal Code, as amended.

WHEREFORE, the lower court's judgment is affirmed with costs against the appellant.

SO ORDERED.

Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

Teehankee, J., no part.

Makasiar, J., on leave.

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