

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMADO MONSALUD, DEFENDANT-APPELLANT.

G.R. No. L-35136. May 31, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

This is an appeal from the judgment of the Court of First Instance of Zambales convicting Amado Monsalud of rape and imposing upon him, among others, the penalty of Reclusion Perpetua.

Prosecution evidence shows that complainant Fidencia Molino, after separating from her husband Pedro Molino, worked as a household helper in the house of appellant Amado Monsalud. Early afternoon of October 6, 1971 appellant who was alone in the house because his wife went somewhere told Fidencia to clean the room. Fidencia entered the room of appellant purportedly to clean it. She was followed by the appellant who immediately closed the door and window. Fidencia asked him why he did that but the latter told her to keep quiet or else something would happen. Afraid, she began shouting but appellant held and carried her to the bed where he succeeded in having carnal knowledge with her. At that juncture, Fabian and Rogelio, both surnamed Maga, who are a brother and cousin, respectively, of Fidencia were peeping through a crack of the window and saw what appellant and complainant were doing. Sensing their presence, the appellant shouted and the two boys scampered away.

Upon reaching home, Fabian told his elder brother, Sabino, what he saw. Accompanied by their mother Beatriz Maga, Sabino, Fabian and Rogelio went to the house of appellant. Upon seeing Fidencia, Sabino slapped her several times, calling her a prostitute, after which Sabino left and returned with a policeman.

The following morning, October 7, 1971, Fidencia reported to the police what happened to her. Her statement was reduced to writing after which Dr. Salvador Fuñe examined her. He did not find any semen or sperm cells in the vagina of Fidencia.

Further, the appellant tried to settle the case by offering to pay P1 ,500.00. This was refused by the family of the complainant.

Appellant denied the charge imputed against him, much less the alleged offer to settle the case for P1 ,500.00. He claimed that about 4:00 in the afternoon of October 6, 1971 he was resting alone in his room when Fidencia entered to ask for some "binlid". Amado Monsalud told her to get some at his rice mill which was located about 10 meters from the house. Just then, appellant heard voices of persons outside the house peeping into his bedroom. He shouted "hoy" and the persons outside ran away.

He and complainant then went outside the room and while they were talking in the sala, Beatriz Maga, Sabino, Rogelio and Fabian arrived. Sabino went after Fidencia who ran towards the back of the house. Upon catching her, he slapped her and called her a prostitute several times. Thereafter, the relatives of Fidencia went away but Fidencia stayed and slept at the bodega of appellant's rice mill.

The following morning, October 7, 1971, Fidencia's mother came again and persuaded complainant to go home.

She refused but when Beatriz was talking to appellant they saw Fidencia running towards the municipal building where she gave a statement to the police, accusing appellant Monsalud of having raped her.

During the pendency of this appeal, appellant filed a motion for new trial on the ground of newly discovered evidence - the letter of the complainant to her close relative, Mrs. Magdalena Meron, wherein complainant states that the accusation against the appellant is "all lies", and that "nothing happened to me (complainant) and Ninong (appellant) on October 6."

Required to comment, the Solicitor General offered no objection to the motion and even pointed to the insufficiency of the People's evidence to sustain the conviction.

This Court deferred its resolution on the motion of new trial until after the case has been decided on the merits.

We agree with the Solicitor General that sexual union was with mutual consent or at least without any resistance. Thus, when directed by the appellant to clean the house she went directly to appellant's room knowing that there were only the two of them in the house. She must have sensed appellant's lewd intention and entering the room was her way of tempting the appellant to pursue his intention.

Complainant claimed that in a period of 30 minutes appellant had sexual intercourse with her three (3) times. If there was any resistance, no matter how token, put up by complainant, appellant could not have had carnal knowledge three (3) times in 30 minutes. The assault was repeated thrice, she said, but she did not explain or even as much as intimate, how the second and third sexual assaults happened. It has been held that "the fact that the accused had succeeded in having sexual intercourse with the complainant for the second and third time is a very strong circumstance against complainant's claim that her previous intercourse was perpetrated by the force or with imminent threat of her life." (People vs. Lacson 53 OG 1823)

Further, the complainant alleged that as a result of the forcible removal of her panty by the appellant, her panty was torn. No such torn panty was presented in evidence before the trial court. Explaining, she merely stated that she threw away the torn panty because everytime she saw it she was reminded of the gory incident committed against her.

Finally, as aptly observed by the Solicitor General, on questioning of the defense counsel, the complainant said that she shouted when the assault was being perpetrated against her. Her testimony, however, reveals that her resistance was merely a token one. Thus:

"Q. And you were shouting?

A. Yes, sir.

Q. And what were you shouting?

A. I was just shouting.

Q. What was you shouting about?

A. I said "Hay."

"The word 'hay' allegedly uttered by complainant while she was being sexually assaulted is, to us, more of an expression of pain or excitement than plea for succor.

"If ever there was any sexual intercourse between complainant and appellant on October 6, 1971, it is submitted that complainant voluntarily yielded to the desires of the appellant as shown in the following testimony of the complainant:

"Q. According to you, you don't want to tell your brother about this incident because you were afraid of Amado Monsalud. What made you afraid?

A. Because I treated the accused like my father already the fact that I was brought up in their house.

Q. In other words, following your logic, it is not that you are afraid but you are ashamed is it not?

A. Yes, sir.

Q. So it is not true then that you are afraid of Amado Monsalud?

A. Yes, sir." (t.s.n. p. 33, February 23, 1972)

Concluding, the Solicitor General said:

"Subjecting the evidence on record to the crucible of scrutiny, we find that the most significant fact decisive of this appeal, is the very conduct of the complainant immediately after the alleged rape. Her actions do not show any sign of fatigue, disturbance or rancor against appellant. She did not confide her predicament to her brothers, to her parents nor to the policeman who came after the alleged rape. She went to the back of appellant's house when she saw her brothers and nephew coming. She slept the whole evening of the day she was raped in the same room with the appellant. Such conduct on her part is contrary to the ordinary course of things and to common experience. (People vs. Acogido, CA-G.R. No. 21513-R, April 30, 1969). Her silent acquiescence which she maintained until the following morning seriously casts doubt on the prosecution's theory of rape."

and recommended that appellant be acquitted of the crime charged.

WHEREFORE, as recommended by the Solicitor General and reversing the decision of the trial court, appellant Amado Monsalud is hereby acquitted on the ground that his guilt has not been proved beyond reasonable doubt, with costs de oficio.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.

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