

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BARTOLOME BAWIT, ACCUSED-APPELLANT.

G.R. No. L-48116. February 20, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the Court of First Instance of Abra an information for rape was filed on September 23, 1977, to wit:

"The undersigned Provincial Fiscal, on complaint of the offended party VICTORIA BAWIT duly sworn, accuses BARTOLOME BAWIT of the crime of RAPE, committed as follows:

That on or about the 26th day of June, 1977, in the Municipality of Bangued, Province of Abra, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and in an uninhabited place, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the complainant VICTORIA BAWIT against her will.

CONTRARY TO LAW with the aggravating circumstance that the offense was committed in an uninhabited place."

After due trial the court rendered the following judgment:

"WHEREFORE, judgment is hereby rendered holding the accused Bartolome Bawit prima facie guilty beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code with the aggravating circumstances of taking advantage of his relationship with the offended party and uninhabited place, and therefore, sentences said accused the penalty of reclusion perpetua or THIRTY (30) YEARS imprisonment with the accessory penalties provided by law. The accused is hereby ordered to indemnify the offended party moral damages in the amount of P10,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs."

From the judgment, Bartolome Bawit has appealed to this Court alleging that the trial court committed the following substantive errors:

"I

x x x IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE COMPLAINANT DESPITE SERIOUS CONTRADICTIONS, INCONSISTENCIES AND IMPROBABILITIES.

II

x x x IN NOT GIVING THE EXAMINING PHYSICIAN'S TESTIMONY AND MEDICAL CERTIFICATE (EXHIBIT H) CREDENCE IN FAVOR OF THE ACCUSED.

III

x x x IN FINDING FACTS NOT BORNE BY EVIDENCE ON RECORD."

The evidence for the prosecution as narrated in the People's brief is as follows:

"The offended party, Victoria Bawit, is a 42-year old married woman, and the aunt of the accused, the latter being the son of the second-degree cousin of the former's husband (p. 8, tsn, March 1, 1978). At about noon time on June 26, 1977, the offended party was going home to Barrio Sagap from the poblacion of Bangued, Abra carrying a basket on her head. As she was walking at the middle portion of the dry river bed near Mudeng, she noticed the accused following her. She asked him if his mother and younger sister had already gone home, to which the latter replied: 'Perhaps they have already gone home because they are not here.' Then, as the two continued walking, the accused stepped on the offended party's right slipper. This prompted the latter to tell the former to go ahead as he was then walking faster. The accused obeyed and left the offended party for quite a distance (pp. 3-5, tsn, Millare).

Then, as the offended party was entering the 'talahib' portion of the area, she saw the accused standing at akimbo in the middle of the path. She continued walking, when all of a sudden the accused grabbed her left hand as she passed by him. The offended party turned around and ran back to where she came from, causing the basket on her head to fall. The accused chased and overtook her near the dry river bed. He then held her two hands and pulled her towards the river bank, where he pinned her down to the ground. Then he placed himself on top of her and started to undress her by pulling down her 'palda' (Exhibit 'B'). She pulled it up, causing her 'palda' to be torn (Exhibit 'B-1'), and kept on struggling to protect her honor. Unable to press evil intention, accused got a stone and hit the offended party with it on the left side of her waistline, causing the latter to lose consciousness (pp. 5-8, Ibid).

When the offended party regained her consciousness, she was already in a secluded place south of the path. The accused was then lying on top of her in the act of having carnal knowledge of her. At this juncture, Julie Bata and Rolando Bata, the two boys who were following them, arrived at the spot where the offended party's basket fell. The two boys immediately shouted, 'Auntie your basket is here with the contents thrown away.' Sensing the presence of the two boys, accused loosened his hold on the offended party, and with a bolo pointed at her stomach, he (accused) warned her: 'If you tell this to anybody, I will kill you.' (pp. 8-11, Ibid).

Whereupon, the two boys saw the offended party coming out of the thick bushes, with a dishevelled hair and torn 'palda', and with dirt all over her body including her face. Julie Bata asked her where she came from, and the latter answered: 'That fool, that devil committed sexual intercourse with me.' Thereafter, the offended party joined the two boys in picking up the scattered contents of her basket. Then, they proceeded home to Sagap with the accused walking behind them. Shortly thereafter, Julie Bata's mother and her ten-year old daughter caught up with them. When the offended party arrived home that afternoon only her children were there, as her husband was then helping a certain Tony Plurad in his ranch. However, as soon as her husband arrived the following morning, she (offended party) lost no time in confiding to him what happened to her. Immediately, the couple reported the matter to the barrio captain, who accompanied them to the PC Headquarters. After her sworn statements were taken (Exhibit 'D'), a medical examination was conducted on the offended party at the Abra Provincial Hospital (Exhibit 'H'). She was also advised to go to the Municipal Judge of Bangued, who conducted his own investigation on the offended party (Exhibit 'E') (pp 14-19, 45-46, 57, Ibid)."

The appellant admitted that he was with his aunt, Victoria Bawit, on June 26, 1977, in going home to barrio Sagap from the poblacion of Bangued but categorically denied raping her.

As in most criminal cases appealed to Us, no difficult question of law is involved; the principal question is the credibility of witnesses. Reviewing the record of the case, we have to affirm the judgment of the lower court not only because of the traditional deference accorded to trial courts in respect of their findings of fact for reasons too well-known to be repeated but also because we find the assignment of errors not well taken.

The appellant contends that Victoria gave conflicting versions of the rape allegedly committed on her. In support thereof it is claimed that:

"In her statement given [on June 27, 1977] at the Philippine Constabulary Headquarters (Exhs. D and D translation) the complainant said:

'(No. 7, Answer) x x x x because I wanted to myself to be released from him he delivered a fist blow on my bulley [belly] and rendered me unconscious and then he dragged me towards the south at the edge of the path x x x x when he has removed it he placed himself on top of me and inserted his penis inside my vagina and commences push and pull x x x x.'

She further said in:

'(Answer No. 10) I noticed him that there was a sudden jerk of his body movement and then I felt a warm fluid coming out from his penis.' (Exh. D translation)

She had to fabricate the complete sexual act from the insertion of the penis, the push and pull, up to and including, the coming out of the warm fluid from the penis. She is a married woman, with six children, she therefore knew

the sequences of a sexual act, not knowing perhaps that a slight penetration if done by force is rape in itself under the law.

Complainant thereafter submitted herself to a medical examination where her exaggerated and/or conjured rape was uncovered. The examining doctor found no hematoma, no external bruises, and internally found her to be negative of spermatozoa. These medical findings conclusively show that complainant was not boxed, not dragged and there was no warm fluid from the penis. She then realized that her statement given at the Philippine Constabulary Headquarters and the medical findings did not reconcile.

Victoria Bawit had to think up of a new version, so that on July 28, 1977 when examined under oath before the Municipal Judge of Bangued, Abra, she testified:

'Then he took a stone and with that stone he hit me here sir (x x x x) and I lost consciousness and when I regained consciousness I saw him fucking me (Answer No. 17, p. 2, Exh. E).

On the question propounded thus:

'Do you know if Bartolome Bawit as he had sexual intercourse with you if he attained orgasm?'

to which she answered:

'I do not know, sir.'

And to the next question:

'Did you not feel anything inside your vagina that would indicate that he attained orgasm.'

to which she answered:

'When I regained consciousness I just felt that his penis was inside my vagina and that he was already withdrawing his penis.' (Q & A, Nos. 31, 32, p. 3, Exh. E)"

Did Victoria revise her version of the rape when she testified before the Municipal Judge of Bangued on July 28, 1977, so that the revised version shall conform to the medical findings contained in Exhibit H? The answer is, No. For Exhibit H was issued by Dr. Fidel Q. Gabat of Abra Provincial Hospital on July 29, 1977, or the day after Victoria gave her statement to the Municipal Judge of Bangued and, therefore, it was not possible for her to have anticipated the results of the medical examination much less to concoct a story that would conform thereto. It must be noted that Victoria is a simple, unlettered barrio woman who could not sign her complaint but had to thumbprint it only.

True there are inconsistencies between Exhibit D and Exhibit E. It must be noted, however, that Exhibit D, was executed on June 27, 1977, the day following the rape when Victoria, the unlettered complainant, must have been in a state of shock and agitation. When she executed Exhibit E a month later, she must have been composed and her recollection on the events more firm. Moreover, the inconsistencies refer to minor details by which the rape was committed. It is sufficient she testified that she had been raped for when her testimony is not improbable she has in effect said all that is necessary. (People vs. Royeras, L-31886, April 29, 1974, 56 SCRA 666.)

In his second assignment of error, the appellant harps on the fact that the medical certificate - Exhibit H - does not state that Victoria had bruises or hematoma "despite the fact that she was allegedly hit with a stone, boxed and dragged 98 meters on a sandy and stoney terrain to a talahiban." Suffice it to say that although Dr. Gabat noted no physical injuries, he found "tenderness at posterior (L) chest and (R) hypocondriac region," which supports Victoria's testimony that she was hit with a stone. As to the fact that no bruises or hematoma were found on her body, we quote with approval the People's brief on this point:

"The appellant, at the age of 19 years, was at the prime of his youth and, therefore, could have easily dragged or carried the offended party, who was then unconscious, to a distance without necessarily letting her body rub the ground. After all, his primary objective was not to brutally inflict physical injuries on her, but to satisfy his lustful desire. Besides, the incident happened on a dry river bed, which normally is sandy and, therefore, even if rubbed against the human body would not necessarily produce bruises. Neither can the absence of bruises and hematoma refute the struggle and resistance which the offended party offered against the appellant. It should be noted that the offended party's struggle was confined in resisting the appellant from pinning her on the ground and in forcefully removing her clothes. This fact is adequately established by the blouse (Exhibit "B") and pantilet (Exhibit "C") she wore during the incident showing thereon the torn portions thereof (Exhibits "B-1" and "C-1", respectively), resulting from her resistance and struggle with the appellant. Thereafter, no further struggle could be offered by the offended party as she was rendered unconscious by the stone blow inflicted on her by the appellant. And, by the time she regained consciousness, appellant had already sexually abused her."

It is also claimed that Exhibit H states that Victoria was negative for spermatozoa, ergo she was not raped. It is enough to say that to prove rape the victim need not be positive for spermatozoa. There can be rape even if no spermatozoa be found in the victim. (People vs. Jose, L-28332, Feb. 6, 1971, 37 SCRA 450; People vs.

Carandang, L-31012, Aug. 15, 1973; People vs. Royeras, supra; and People vs. Amores, L-32996, Aug. 21, 1974, 58 SCRA 505.)

Finally, the appellant insists that certain observations and findings of the trial court are not supported by the evidence on record and he mentions four.

The appellant questions the following statement in the decision: "x x x the accused here Bartolome Bawit is a man of strong physical features, at the very prime of his youth, 19 years old and a former second year high school and with experience with girls is not beyond any possibility to have raped his aunt." This is nit-picking for everything said about Bartolome is evidently true including his "experience with girls" for he admitted that he had courted girls and in fact had a sweetheart at the time of the incident.

The appellant also questions the court's finding "x x x that the thickets where Victoria Bawit came from could not be pierced thru by his sight because it is very thick." But this finding is supported not only by the testimony of Rolando Bata but also by the judge who made an ocular inspection of the place where the rape took place. Thus the judge said in his decision: "This contention of the defense is without merit because as a result of the ocular inspection, the offended party Victoria Bawit indicated to a place where there are thick talahib growths and bushes called 'bagbagotot' and it was behind this thick bushes where the accused laid her on the ground already very weak and where he carnally committed the crime of rape; this place indicated by the accused is perfectly hidden from the western side because there are thick talahibs; also on the north and south and even on the eastern side, it is perfectly hidden by 'bagbagotot' bushes such that the accused had all the time and chances to commit the crime of rape against his aunt, Victoria Bawit. This scene of the crime as inspected by the undersigned Presiding Judge precludes any help or aid or even the remote visibility from any person who might have been passing near the premises at the time; that from the scene of the crime to the path going to Sagap is around 98 meters so that even if the offended party had been shouting for help or asking for aid from any person possibly within the vicinity her shouts cannot be heard because of the distance; in other words, the place or scene of the crime as inspected by the undersigned Presiding Judge during the ocular inspection is a perfect secrecy and beyond the sight and visibility of a person who is walking along the path going to Sagap."

The appellant claims that after the incident all that Victoria said were:

"x x x he recalled that Victoria Bawit said 'That devil Bartolome Bawit forced me to have sexual intercourse with him.'" (Decision, p. 11).

"But when Victoria Bawit mentioned and told it to us that she was forcibly raped by that devil Bartolome Bawit." (Decision, p. 11).

and yet the trial court found that she was forced to have sexual intercourse with Bartolome and that she was forcibly raped. Again this is nit-picking. For the fact is Bartolome had sexual intercourse with Victoria against her will.

Finally, the appellant claims that Victoria should have shouted for help when she was being abused but she did not and so he questions the following statement of the trial court: "x x x is around 98 meters so that even if the offended party had been shouting for help or asking for aid from any person possibly within the vicinity her shouts can not be heard because of the distance." Frankly, we do not see any relation between the argument and the quotation. But if the point be that Victoria did not make an outcry, it is enough to say that her outcry would have been in vain for there was no one nearby to render succor. Besides she was knocked unconscious after

pleading and struggling in vain with her assailant.

We find no reason and none has been suggested why Victoria should falsely accuse her nephew of rape and thus expose herself to the wagging tongues of her small rural community. Her outrage which she manifested soon after she was violated gives credence to her story.

In view of the foregoing, we find that the trial court correctly convicted the appellant.

WHEREFORE, the appealed judgment is hereby affirmed but with the elimination therein of the phrase "or THIRTY (30) YEARS imprisonment" for although Art. 27 of the Revised Penal Code provides that a person sentenced to any perpetual penalty shall be pardoned after undergoing the penalty for thirty years, he may nonetheless be denied pardon by reason of his conduct or some other serious cause. Costs de oficio.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr. and De Castro, JJ., concur.

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