

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR LUDOVICE, MANUEL LUDOVICE, AND RODOLFO LOBRIANO, ACCUSED-APPELLANTS.

G.R. No. L-34986. March 23, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from a decision of the defunct Court of First Instance of Albay in Criminal Case No. 4572 where the appellants - CESAR LUDOVICE, MANUEL LUDOVICE and RODOLFO LOBRIANO - were accused of robbery with rape but were found guilty of rape only because of insufficient evidence in respect of the robbery.

The judgment of the trial court reads as follows:

"WHEREFORE, the Court finds the three accused, CESAR LUDOVICE, MANUEL LUDOVICE and RODOLFO LOBRIANO alias "Rudy" guilty beyond reasonable doubt of the crime of rape as defined and punished under Art. 335 of the Revised Penal Code, as amended by Rep. Act 4111 and therefore hereby sentences them to suffer the penalty of "Reclusion Perpetua"; to indemnify the offended party jointly and severally in the sum of P5,000.00 by way of damages without subsidiary imprisonment in case of insolvency and the costs. The charge for robbery is hereby dismissed for insufficiency of evidence." (Expediente, p. 133.)

The appellants make the following assignment of errors:

- (1) THE TRIAL COURT ERRED IN GIVING UNDUE CREDIT TO THE TESTIMONY OF THE COMPLAINANT AND HER WITNESSES;
- (2) THE TRIAL COURT ERRED IN FAILING TO CONSIDER THE FINDINGS OF THE PHYSICIAN AS APPEARING IN THE MEDICO LEGAL CERTIFICATE EXHIBIT B; and
- (3) THE TRIAL COURT ERRED IN REFUSING TO CONDUCT AN OCULAR INSPECTION OF THE PREMISES IN SPITE OF THE REQUEST OF THE COMPLAINANT AND THE COUNSEL FOR THE ACCUSED." (Brief, 22-23.)

The first assignment of error deals with the credibility of witnesses.

The People's version of the rape as gathered principally from the testimony of the complainant is summarized as follows:

"Having been invited by her friend, the maid of Atty. Miles Ludovice, complainant Leticia Padua attended the party in the lawyer's house at Locsin, Daraga, Albay, in the evening of September 25, 1966. (p. 12, TSN, June 8, 1967) The place of the merry-making was just a stone's throw from the house of the spouses Matias and Gloria Magdaong for whom complainant herself worked as a maid. (pp. 10-11, TSN, June 8, 1967)

At about 10:00 p.m., while complainant was conversing with her friend in the sala, appellants Cesar Ludovice and Manuel Ludovice, nephews of Atty. Miles Ludovice, introduced themselves to her. (pp. 3-4, 13, TSN, June 8, 1967)

Shortly thereafter, complainant left for the house of her sister Adela Padua, to inquire if she would join the party. As she was passing the house of the Misolas, complainant noticed that appellants Cesar Ludovice, Manuel Ludovice and Rodolfo Lubiano were following her. Suddenly, Rodolfo Lubiano seized her by the left arm, Manuel Ludovice went behind her and cupped his hand over her mouth, while Cesar Ludovice held her by right arm. Appellants dragged and pushed complainant towards the church. She struggled and tried to kick them, but to no avail. (pp. 4-5, 13-14, 15-16, TSN, June 8, 1967)

When they reached a place beside the church where a large acacia tree stood, appellants forced complainant to the ground. Again she tried to kick appellants and hit them with one of her arms which became momentarily free. Her efforts were futile. Appellants slid her jeans and panty down to her legs. Then, alternating in restraining complainant and preventing her from making an outcry, they successively had sexual intercourse with her. Rodolfo Lubiano was the first, Manuel Ludovice was the next, and Cesar Ludovice was the last. (pp. 5-7, TSN, June 8, 1967; p. 4, TSN, June 9, 1967)

After raping complainant, appellants withdrew to a distance of about fifteen or twenty meters to confer among themselves. Meanwhile, complainant hurriedly fixed her clothes and started to run home. Appellants tried to give chase but failed to catch her. (p. 8, TSN, June 9, 1967; p. 3, TSN, June 14, 1967)

When she reached home, complainant thoroughly washed her genitalia because she felt dirty on account of what appellants had done to her. (p. 7, TSN, June 9, 1967; p. 5, TSN, June 14, 1967)

The following day, September 26, 1966, she reported to her employer Gloria Magdaong what was done to her by appellants. Gloria Magdaong advised her to report the matter to the police, which she did. (pp. 6-9, TSN, June 14, 1967)

Complainant also went to the Albay Provincial Hospital on the same day, September 26, 1966, for physical and medical examination. (p. 9, TSN, June 8, 1967; pp. 9-10, TSN, June 14, 1967) The results of the examination are set forth in the medical certificate (Exhibit B) issued by Dr. Salvador Petelos:

"(1) PHYSICAL EXAMINATION - Did not reveal any evidence of injury;

"(2) INTERNAL EXAMINATION REVEALED:

(1) Middle 3rd of the inner part of both labia minora with reddish bluish discoloration;

(2) Hymen highly elastic, no evidence of injury;

(3) Introitus admits one finger easily and 2 fingers snugly.

"(3) MICROSCOPIC EXAMINATION - Negative for spermatozoa."

On September 27, 1966, complainant reported to her father, Marcelino Otico, that she was raped by appellants. (pp. 6-7, TSN, September 29, 1967)" (Brief, pp. 1-5)

Appellant Rodolfo Lobriano was an 18-year old student when he testified on October 16, 1967. He said that he was at the house of Atty. Miles Ludovice in the evening of September 25, 1966 to attend a birthday party of their Lolang Tina. Cesar and Manuel Ludovice were with him when a girl arrived. He approached the girl and introduced himself as Boy Lobriano; she answered that her nickname was Letty. They went to the balcony where he "asked her whether she could allow me to have something; in reply, she told me it would be alright as long as it is not bad." (TSN, p. 104.) He also told her "Letty, I have a feeling for you." (Id.) Thereafter, Letty asked him to go to the Luneta and on the way Letty told him that she was the maid of Matias Magdaong who had bad intentions for her. Letty decided to go home via the back door for which reason they had to pass by the Daraga Catholic Church. Near the church, Letty asked for his full name and she in turn said that her name was Leticia Padua. What happened thereafter according to Lobriano is best told in his own words, thus:

"Q [Atty. Ludovice] You said that she stopped at that moment when she asked you about your real name, what else happened if any?

A I asked Letty whether she also have an affection for me.

Q What did she tell you?

A No reply, she told me: 'I will give you my answer provided you do not fool me.'

Q What else happened?

A After saying that I also said that if it is true that you like me, can you prove that statement to me.

Q What else happened?

A After telling me that she embraced me and kissed me.

Q What did you also do upon being embraced and being kissed by Letty?

A I first detached myself from her.

COURT

Q Did you not embrace her also?

A Not yet, Your Honor.

Q Did you not kiss her also?

A I kissed her also because she kissed me.

COURT

Go ahead.

ATTY. LUDOVICE

Q After you had detached yourself, what else happened?

A She asked me where I was going and I said I am not going anywhere.

Q What else transpired?

A Then I asked Letty again: 'Letty if you really love me can you give me one thing which I will ask from you?'

Q What did she say?

A She did not reply but she sat down near the acacia tree.

Q Was that acacia tree still standing or was it already lying down to the ground?

A It is a living and standing acacia tree.

Q When this was happening was there any person that you noticed around the vicinity of the church?

A No, sir.

Q When you left the balcony of the house of Cesar Ludovice, where were Cesar Ludovice and Manuel Ludovice?

A They were already in the house of Atty. Ludovice.

Q You said that the girl sat at the foot of the acacia tree, what happened there?

A I also sat down near the acacia tree behind her and then asking her, 'Letty are you willing to go with me now?'

Q What did Letty say?

A She did not reply.

Q What did you do?

A I continued sitting.

Q What else happened?

A When I was sitted [seated] beside her already I put my right arm around her body and kissed her; and in so doing, I noticed that she was inclining herself downward.

Q At this particular moment what happened?

A Then she continued to lie down and then I was already on top of her.

Q While you were on top of her what happened?

A When I was on top of her I kissed her and after doing so, I lifted my head and asked her this question again, 'Letty somebody might see us.'

Q What did she tell you?

A She told me that nobody was around.

Q And then what happened?

A I once again kissed her and at the same time I felt that her buttocks were being raised towards the lower portion of my body.

COURT

Q. And you were over her body?

A Yes, sir.

ATTY. LUDOVICE

Q What did you do?

A I got up.

COURT

Q Why did you get up?

A I tried to get fresh air.

Q Was not the place open?

A I was gripping [groping] for fresh air because I was somewhat afraid.

Q Were you not the one who asked Letty to give you something as you have said before?

A Yes, Your Honor.

Q And after you asked for it you got up to get fresh air?

A I was afraid because there might be some people who might show up.

COURT

Go ahead.

ATTY. LUDOVICE

Q You said that you get up, what else happened after getting the fresh air that you needed?

A I saw her remove her jeans.

Q What did you do upon seeing her removing her jeans?

A I remained standing.

COURT

Q Did you not help her?

A No, Your Honor.

COURT

Go ahead.

ATTY. LUDOVICE

Q After a while that you had been standing and you saw her remove her jeans what else happened?

A I embraced her.

COURT

Q Had she already removed her jeans when you embraced her?

A Yes, Your Honor.

COURT

Go ahead.

ATTY. LUDOVICE

Q What else happened after you embraced her again?

A I got up again and removed my pants and together with my walker by lowering them.

COURT

Q While you were doing all these, what was Letty doing when she had no longer her jeans?

A She was lying down.

Q Already bare?

A She had her dress up on the upper portion but not very much.

Q She had no more panties?

A She also had her panties but it was already removed.

Q After she removed her jeans and panties she lied down?

A Yes, Your Honor.

Q And while she was lying down you were also removing your trousers?

A Yes, Your Honor.

COURT

Go ahead.

ATTY. LUDOVICE

Q Did Letty remove her panty and jeans out of her feet?

A No, sir.

Q You said that the panty and the jeans were already removed from the lower portion of the body of Letty, what did you do?

A So, I was trying to insert my genital organ to her vagina but it was impossible because her thighs were close to each other.

Q At that moment what did you do if any?

A I requested her to spread or open up her thighs so that mine could be inserted into her.

Q What did she do?

A She did not open her thighs.

Q What else happened?

A When I was about to get up Manuel showed up.

Q You mean to tell the Court that your genital organ penetrated the vagina of Letty?

FISCAL STO. TOMAS

We object to the question as leading.

COURT

Witness may answer.

WITNESS

A No, Your Honor.

COURT

Q Did you ejaculate before getting up?

A No, sir.

Q There was no ejaculation?

A No, Your Honor.

ATTY. LUDOVICE

Q You said that Manuel Ludovice appeared, where did he appear?

A Near our head. At first in the place where our heads were situated.

Q What did Manuel do?

A Manuel said, 'I will report you.'

Q What did you do?

A I put back my pants.

Q What else happened after you put back your pants?

A Manuel Ludovice told me that my mother wanted me to go home.

Q So, what did you do?

A I went home.

COURT

Q What about Letty?

A Letty was left behind.

Q You just left her behind?

A I left her behind because Manuel was already there.

Q When you left Letty she was still lying down?

A Yes, Your Honor.

Q Were the jeans still down?

A Yes, Your Honor.

COURT

Go ahead.

ATTY. LUDOVICE

Q Where did you go after you left Letty lying down there?

A I went home." (TSN, pp. 108-116.)

Appellant Manuel Ludovice was a 20-year old farmer when he testified on January 11, 1968. He was at the house of Atty. Ludovice on September 25, 1966 because of a birthday party. Rodolfo Lobriano and Cesar Ludovice were there also. He saw Rodolfo engaged in a conversation with Leticia Padua. He had not known Leticia before that time. He was asked by the mother of Rodolfo to get Rodolfo but Rodolfo and the girl had left so he and Cesar Ludovice went looking for them. They found the pair at the foot of an acacia tree near the church having sexual intercourse. The time was about 11:30 in the evening. He even heard the following exchange between the pair:

"Q [Atty. Ludovice] After a while what happened next?

A Then Lubiano [Lobriano] said, 'It has not yet entered.'

Q What else happened?

A Then Leticia answered, 'No it is inside already.'" (TSN, p. 163.)

After the act, Leticia stayed lying on her back with her jeans down. He also wanted to have Intercourse with her and was about to do so when he desisted because Leticia was crying. After Leticia had stood up, Cesar Ludovice arrived. They returned to the Ludovice residence with Leticia and on the way Cesar told Leticia, "You also yield to him in order that he would not disclose or reveal the thing that happened." (TSN, p. 168.)

The trial court summarized Manuel's testimony as follows:

"Q So what happened in this case is this: Lubiano [Lobriano] had sexual intercourse with Padua, you wanted also to have sexual intercourse with Padua, but Padua rose up and then Cesar Ludovice also asked that he be given so that he would not reveal or disclose the matter, is that correct?

A Yes, your Honor." (TSN, p. 170.)

Appellant Cesar Ludovice was an 18-year old messenger when he testified on January 11, 1968. He was also at the house of Atty. Ludovice where a birthday party was held in the evening of September 25, 1966. He went with Manuel Ludovice to look for Rodolfo Lobriano. He saw two persons near the church and, "Well, I came to know that one of the persons we were following was Rodolfo Lubiano [Lobriano] and the other one was Leticia Padua only after that incident or trouble when we already went there." (TSN, p. 192.) After Rodolfo had gone home, "I also asked her if she would also give way to me but she did not answer." (TSN, p. 194.)

A comparison of the People's version and that of the appellants easily leads to the conclusion that credibility weighs definitely in favor of the former. For the People's version is straight-forward and consistent whereas the appellants' version suffers from fatal infirmities.

Item: Rodolfo Lobriano stated that it was Leticia who initiated the physical contact between them. Since they had just met at the party and were perfect strangers before that, it is not possible to believe his story because the Filipino woman is shy and reserved by nature which makes her a difficult prey for the predatory male.

Item: Rodolfo said it was Leticia who made suggestive motions for coitus but if it were so why was she crying when Manuel Ludovice saw her and why did Cesar Ludovice speak of "that incident or trouble" at the site where he saw Rodolfo and Leticia?

Item: Rodolfo claimed he as not able to enter Leticia but Manuel's testimony shows that he did.

Item: The testimony of Rodolfo, Manuel and Cesar show very clearly that each one was lusting for Leticia.

The appellants' second assignment of error relies on the medical certificate - Exhibit B - to support their claim that there was no rape. They point to the statement that Leticia's physical examination "did not reveal any evidence of injury" and the microscopic examination was "negative for spermatozoa."

The absence of physical injury and spermatozoa does not negate the fact of rape.

The absence of contusion or hematoma on Leticia does not belie her claim that she was raped. According to Leticia the appellants held her tightly on different parts of her body but she was not beaten or other-wise injured. Under such circumstances the absence of physical injury is normal, not unusual.

As to the absence of spermatozoa, Leticia said that when she arrived home after the rape she washed herself thoroughly because she felt dirty - as who would not? Moreover, to prove rape it is not necessary to show the presence of spermatozoa. (People vs. Selfaison, L-14732, January 28, 1961, 1 SCRA 235.)

After the decision of the trial court had been promulgated, the accused filed a motion for new trial. One of the grounds invoked in the motion was a reiteration of their request for an ocular inspection "of the route and of the place where the act complained of had allegedly been committed." (Expediente, p. 137.) The trial court denied the motion and the denial of the request for an ocular inspection is now assigned as an error. This assignment of error cannot be sustained for the same reason given by the trial court in denying the motion for new trial. The fact of sexual intercourse is there and cannot be denied. The only issue is whether or not Leticia gave consent. The physical environment has no relevance to the fact and the issue.

This is a case of multiple rape where three persons using their superior strength successively raped Leticia. Each of the three is guilty of three separate crimes of rape because each is responsible not only for the rape committed by him but also for the rape committed by the others. (People vs. Jose, et al., L-28232, February 6, 1971, 37 SCRA 450.)

WHEREFORE, the judgment of the trial court is hereby modified by sentencing each of the appellants to serve the penalty of three (3) reclusion perpetua; to indemnify Leticia Padua jointly and severally the sum of Thirty Thousand (P30,000.00) Pesos; and to pay the proportionate share of the costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro and Escolin, JJ., concur.

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