

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDDIE GAMEZ, ACCUSED-APPELLANT.

G.R. Nos. L-36428-29. August 30, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Court of First Instance of Batangas, 8th Judicial District, Branch VII, convicting Eddie Gamez of the crime of Acts of Lasciviousness in Criminal Case No. 153 and for the crime of Rape, in Criminal Case No. 152. The trial court conducted a joint hearing and rendered a joint decision for the two cases. The dispositive portion of the decision reads:

"WHEREFORE, for the crime of Acts of Lasciviousness, the Court hereby sentences the accused to suffer an indeterminate sentence of TWO (2) MONTHS and ONE (1) DAY of Arresto Mayor to TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of Prision Correccional, and to pay the costs.

"As regards criminal case No. 152 (Rape), the accused is hereby sentenced to suffer RECLUSION PERPETUA, and to pay the costs."

The criminal complaint for rape filed against the defendant-appellant alleged:

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"That on or about the 4th day of November, 1970 at about 2:30 o'clock in the morning, in Barrio Guinhawa, Municipality of Tuy, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with violence and intimidation, forcibly dragged and took the undersigned offended party to a sugarcane plantation and while thereafter, did then and there, wilfully, unlawfully and feloniously lie with and have carnal knowledge of her against her will and consent." (Original Records, Criminal Case No. 152, p. 3)

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The criminal complaint for acts of lasciviousness reads:

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"That on or about the 3rd day of November, 1970 between 11:00 and 12:00 o'clock at night, in Barrio Guinhawa, Municipality of Tuy, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, married man with intent to satisfy his lust, did then and there wilfully, unlawfully and feloniously commit acts of lasciviousness on my person by then and there approaching me while I was lying down asleep and thereafter embracing and kissing me against my will and consent and by means of force." (Original Records, Criminal Case No. 153, p. 2)

The facts established by the prosecution and accepted by the trial court as basis for the decision are summarized by the court as follows:

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"According to the complainant Perlita Abraham, she is a native of Bauan, Batangas, but she taught in Juan Sumulong Elementary School in Manila. On November 2, 1970 she went to the house of the accused in Guinhawa, Tuy, Batangas for a brief vacation. She was accompanied by her mother, an aunt, a teenage girl and a small boy. She knew the accused very well because he is her compadre, she being the godmother of the youngest child of the accused. The following day, Nov. 3, her mother, aunt and the teenage girl left Tuy for Bauan, Batangas, so that only the small boy was left with her in the house of the accused. About midnight of November 3 she was suddenly awakened because someone laid beside her. Upon opening her eyes she recognized the intruder to be her compadre the herein accused. Suddenly, he kissed her on the lips. She pushed him and tried to free herself from his hold. At this juncture, the accused threatened to kill her if she causes an alarm. Thereafter the accused started to kiss her again but she tried her best to evade his kisses. Notwithstanding the threat of the accused, complainant shouted and called for the wife of the accused who, upon being awakened, admonished her husband saying 'Why? Are you not ashamed to do this to our comadre?' Instead of making a reply, the accused stood up and started to maltreat his wife. This naturally caused a commotion and all the children of the accused were awakened. Even the mother of the accused who was at the ground floor was disturbed in her sleep and she called for the accused. The latter however arrogantly shouted back and told her not to interfere. Several other persons arrived but they were met by the accused who told them, 'Huwag kayong makikialam.' The complainant finally decided to go to the street believing it to be a safer place for her. While there, she met a certain Ka Pendong who invited her to his house. She readily agreed. She was joined by the two children of the herein accused. In the house of Ka Pendong she was given water and was told by the wife of Ka Pendong that she should take a rest. The wife of Ka Pendong also informed her that the companions of the accused in the house were all crying. Much later, Ka Pendong informed her that the accused was no longer in the house and upon suggestion of the former she agreed to go to the house of the accused to fetch the small boy whom she left in the house. On the way she noticed the accused approaching them. When already near each other the accused tried to hold her again but she tried to evade him by going around Ka Pendong whom she asked to help her. Her request for help seemed to fall on deaf ears because she noticed that Ka Pendong did nothing. Finally the accused caught her hands and because she lost her balance she fell to the ground. As she was trying to stand while shouting, the accused gave her fist blows. Then the accused dragged her. She again resisted. For making the situation hard for the accused, the latter gave her more fist blows and again dragged her. When they reached in front of the house of the brother of the accused, she shouted for help. For doing so, she received more fist blows, one of which landed on her stomach and she became unconscious. When she regained her consciousness she realized that she was in the cane field with the accused on top of her and having sexual intercourse with her. She struggled to free herself but the accused gave her fist blows in the thigh. The accused did not release her until he had fully consummated his bestial lust. Then the accused advised her to put on her jeans. She tried to stand but realized that she was too weak to do so. She also felt pains all over her body. In such condition, the accused brought her to his house, advising her however that she should not create any scandal otherwise, he will kill her. Once in the house of the accused the wife of the accused attended to her up to November 5. The whole day of November 4, she was feverish and suffering from pains in her body. The following day, November 5, she went to Bauan, Batangas accompanied by the wife of the accused. She had not informed anyone, including the wife of the accused, about her harrowing experience in the cane field. Her reasons for the silence, according to her, was that she had to deliberate carefully what course of action to take. She could not immediately confide the matter to her mother because she was suffering from heart ailment. She was also afraid of the possible drastic action her father and brothers might do. Thus according to the complainant, it was only when her mother went to Manila and told her not to be afraid to confide her troubles to her that she decided to reveal the truth. Hence, on November 12, she went to the P.C. and executed her affidavit. xxx"

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On November 12, 1970, Dr. Benjamin M. Aguado, a resident physician of the Batangas Provincial Hospital

examined Perlita. The medico legal certificate (Exh. "A") contained the following findings:

“Internal examination-With old laceration at

1:00 O'clock

2:00 O'clock

9:00 O'clock

10:00 O'clock

11:00 O'clock

"Physical Examination:

1. Multiple abrasion left scapular region.
2. Multiple abrasion left forearm middle 3rd posterior aspect
3. Multiple abrasion neck supra sternal notch
4. Hematoma posterior lateral aspect distal 3rd arm right
5. Hematoma antero-lateral aspect distal 3rd left arm
6. Hematoma supra patellar region left thigh
7. Hematoma anterior portion middle 3rd left thigh
8. Multiple abrasions right iliac region" (Folder of Exhibits, p. 6).

On the other hand, the defendant-appellant presented his own version of the facts as follows:

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"He had known Perlita for the past three years. He met her for the first time when he went to Manghinaw, Bauan to look for a job. The father of Perlita, a contractor of gravel and sand requested him to stay in his house. Perlita was then staying in the said house of her father. She was then jobless but schooling in Batangas. On numerous occasions Perlita rode the truck he was driving because he used to bring sand to Batangas. After graduation, she taught in Bauan. On several occasions, he also took Perlita to school where she was teaching. Then Perlita was transferred to another school and as before, he used to take her there. This friendship developed into love and soon thereafter they became sweethearts. Perlita must have been so much in love with him because she even approached him while in bed. Hence, their relationship became more intimate and they cohabited as husband and wife.

"The first time Perlita went to his house in Tuy was during a barrio fiesta in 1968. Thereafter she occasionally visited his place. On November 2, 1970 he found Perlita, the mother, an aunt and a boy in his house upon his arrival. That evening they slept in his house. The following day Perlita's companions left except the boy. On November 3 Perlita slept in the sala as per their agreement so they could have an opportunity to be together, they being sweethearts. That evening of November 3 he came from a mahjong game and when he was on his way to their room to see if his wife was asleep, Perlita tripped him and said that his wife was already asleep. So he laid beside her and had carnal knowledge of her. As they were having intercourse, his wife came out of the room with a club and started to hit him and Perlita. In the course of the attack, Perlita fell down the stairs and they left the house and went to a side of a river. Perlita suggested that they leave the barrio but on second thought, they realized that he was only wearing his undershirt and shorts, while Perlita only her T-shirt without anything underneath. They went back to the house and against the protest of his wife, he managed to get some

clothes which a child of his gave to Perlita, while he was holding his wife.

"They asked for forgiveness and prevailed upon the wife not to file a case against them. However, his wife rejected the proposal of Perlita that she live with them in the same house. Finally, they agreed that Perlita should leave and he will turn a new leaf. The following morning the wife of the accused accompanied Perlita to Bauan."

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The defendant-appellant made the following assignments of errors in his appeal:

I

THE TRIAL COURT ERRED IN BELIEVING THE VERSION OF THE PROSECUTION.

II

THE TRIAL COURT ERRED IN CONVICTING DEFENDANT-APPELLANT OF THE CRIMES OF ACTS OF LASCIVIOUSNESS AND RAPE ON THE BASIS OF ASSUMPTIONS, INFERENCES AND CONCLUSIONS NOT SUPPORTED BY THE EVIDENCE.

III

THE TRIAL COURT ERRED IN FINDING DEFENDANT-APPELLANT GUILTY OF THE CRIMES OF ACTS OF LASCIVIOUSNESS AND RAPE.

The appellant begged leave to discuss the above assigned errors together in one joint argument.

The appellant's contentions hinge on credibility of witnesses. We have gone carefully over the records especially on the points stressed by the appellant but find no reason to depart from the general rule of according respect to the findings of the trial court on the credibility of the persons who testified before it. (See *People v. Santos*, L-60055, April 28, 1983; *People v. Mercado*, 97 SCRA 232) The lower court did not overlook any facts of substance and value which, if considered, might have affected the result of the proceedings.

That there was sexual intercourse is established. The appellant claims that he and Perlita had sex on various occasions with her consent. The incident on November 3 when the appellant's wife allegedly caught them was, according to the appellant, the fifth sexual intercourse between them. Dr. Aguado, the medico legal officer of the Batangas Provincial Hospital testified, on the other hand, that the five lacerations of Miss Abraham's hymen could have been sustained in only one sexual intercourse and it was possible for these lacerations to have been sustained between midnight of November 3 and early morning of November 4, 1970.

The incidents happened shortly before midnight and on the early morning of November 4. The medical examination was conducted on November 12 or eight days later. It is significant that in addition to the lacerations of the hymen in five different places, the complainant still bore signs of multiple abrasions in the left scapular region, similar abrasions in the left forearm, multiple abrasions above the neck's sternal notch, multiple abrasions in the right iliac region, and hematomas in four separate parts of the left arm and left thigh. The injuries are clearly more compatible with the violent attacks of a rapist than the alleged beatings of an aggrieved wife.

The appellant argues that if the victim was raped she should not have returned to his house. The records show that at this point there was no rape yet. After being subjected to acts of lasciviousness, Perlita fled to the street. It was then almost midnight. A certain Ka Pendong aroused by the commotion, the shoutings, and the crying of children invited Perlita to his house. Later on, Ka Pendong told her that the appellant was no longer around or in his house

and that she should fetch the small boy, her only companion in the appellant's barrio, who was crying. On her way she met the accused who dragged her while Ka Pendong did nothing. Only then was rape committed. She returned to the house to fetch her boy companion, thinking that after the outcry and commotion Gamez had fled and it was already safe.

The appellant asks why Perlita left his house only the day after the alleged rape. He states that if Perlita was raped, she should not have allowed his wife to escort her to Bauan, Batangas.

The records show that the complainant was aching all over after the rape in the cane field. She was so weak she could not even stand up to put on her jeans. She had been given repeated fist blows, until she became unconscious from a blow in the stomach. It was the appellant who brought her up to his house, telling her that if she created a scandal he would kill her.

As to why she did not go home to Bauan immediately but waited until the following morning, the complainant stated:

"Q Now according to you, you left the house of Eddie Gamez on November 5. Could you tell us why you remained up to that time in the house of Eddie Gamez until you left?

"A Because the whole day of November 4 my body was aching. I had a fever and I could hardly move.

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"Q And the following morning you had your breakfast in the house of Eddie Gamez?

"A I was not able to take my breakfast then.

"Q Because you were then very tired?

"A I was not able to take my breakfast because my mind was confused and my body was aching.

"Q How about your lunch?

"A I was not able to take my lunch.

"Q How about your supper?

"A I took a little in my supper.

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"Q As a matter of fact, on the night of November 4 you slept in the house of Eddie?

"A Yes, sir, because he did not want me to leave."

The wife of appellant Gamez accompanied the complainant because of the latter's condition. Mrs. Gamez had run to Perlita's help when the appellant lay down beside her and committed the lascivious acts. For her trouble, Mrs. Gamez was beaten up by her husband, boxed several times and her head banged against the window. There was no inconsistency or incongruity in her bringing the complainant away from her husband's vicious reach.

The assigned errors have no merit. We also agree with the following findings of the lower court:

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"After a close study of the two versions presented in this case, the Court is more inclined to believe the version given by the prosecution. In the first place, the accused had pictured Perlita to have been very much in love with him. In fact Perlita was also pictured not only as the passionate type but even the aggressive type. Thus

the accused claimed that it was Perlita who approached him while in bed in Bauan, Batangas; that several sexual intercourses that followed were committed without the slightest resistance or objection on the part of Perlita; that on the night in question Perlita was so in a hurry to cohabit with him that she even tripped him while he was trying to see if his wife was already asleep in the room. On top of this all, the wife of the accused tried to further picture Perlita as a very daring and highly immodest woman because according to the wife of the accused Perlita was completely naked while having intercourse with the accused just outside of the room of their house. Indeed if these were all true Perlita must be madly in love with the accused so much that she would risk unfavorable consequences just to maintain her relationship with the man she loved. Such a situation as pictured by the defense runs counter to the fact that barely a week after the incident in question, and with the accused having done nothing to displease her, she filed not only one criminal charge but two.

"Aside from the fact that the version of the accused in its entirety appears to be incredible, an examination of the evidence for the defense would also show vital contradiction which would affect the credibility of the version presented by the defense. For example, according to the accused when he and Perlita went down the house and proceeded to a side of a river, Perlita was wearing only a T-shirt without clothing underneath. On the other hand, the wife of the accused testified that when Perlita left her house after she was caught having intercourse with accused, she was completely naked. In this connection, it would not be an exaggeration to again brand this portion of the evidence for the defense as utterly incredible and absolutely contrary to human decency. The Court has observed the behavior of Perlita while on the witness stand and the Court is convinced that she is not the type of a woman who would dare, under similar circumstances, to be out in the street completely nude.

"Secondly as already stated above the defense claims that after the wife of the accused have caught Perlita and the accused in the act, the wife of the accused clubbed Perlita and beat her mercilessly until she fell down the stairs. Yet in another part of the story of the defense, it is said that both went back to the house begging for forgiveness from the wife of the accused and at the same time pro-posed that she be allowed to share the house of the spouses. This again is highly incredible because no person in his right senses would have the temerity to make such an indecent proposal to the offended spouse after receiving severe beatings from the hands of the latter."

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It is hard to believe that a young public school teacher would publicly disclose that she had been raped, thereby practically foreclosing the probability of a blissful married life, exposing herself to the ordeal and embarrassment of public trial, subjecting her private parts to examination, allowing her honor and reputation to be sullied, and heaping upon herself untold humiliation, unless she is motivated by a strong desire to bring to justice the culprit who had grievously wronged her. As observed by the Solicitor-General, "No young Filipina of decent repute would publicly admit that she had been criminally abused and ravished, unless, that is the truth. For it is her natural instinct to protect her honor". (People v. Taño, 109 Phil. 912; People v. Gan, 46 SCRA 667).

We find, however, that the trial court erred in not ordering defendant-appellant to indemnify the offended party, Perlita C. Abraham in the amount of twelve thousand (P12,000.00) pesos.

WHEREFORE, the judgment appealed from is MODIFIED in that the defendant-appellant is ordered to indemnify Perlita C. Abraham in the amount of Twelve Thousand (P12,000.00) Pesos. The judgment is AFFIRMED in all other respects.

SO ORDERED.

Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

Teehankee, J., (Chairman), took no part.

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