

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LORETO AQUIAPAS Y GUAY, ALIAS “ABLAO”, ALIAS
“SORIANO AQUIAPAS”, DEFENDANT-APPELLANT.**

G.R. No. L-49910. November 28, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Appeal by Loreto Aquiapas from the decision of the Court of First Instance of Pangasinan, sentencing him to reclusion perpetua for the crime of rape with which he was charged for having, with force and violence, had carnal knowledge with Emiliana Baas, and ordering him to pay indemnity to the victim in the sum of P12,000.00, and costs.

The facts as proven by the prosecution's evidence are recited quite accurately in the People's brief, from which We quote the following:

"At about 7:00 o'clock in the evening of September 19, 1978, complainant Emiliana Baas was walking along the Sagunto road in Sison, Pangasinan, on her way home. She was carrying a bag, containing rice and vegetables, an umbrella and a kerosene lamp. There was a heavy downpour that evening. Suddenly, from the dark in the semi-uninhabited place, appellant Loreto Aquiapas, then intoxicated, appeared and grabbed Emiliana Baas, causing her to drop her bag and umbrella. Appellant boxed her on the nose, as a result of which blood flowed from her nose. Complainant tried to pick the kerosene lamp and hit the appellant with it, but the latter boxed her for the second time. This time complainant was hit on the mouth. Complainant struck the appellant with the lamp but the appellant squeezed her hand forcing complainant to drop the lamp again. Complainant was then pushed and boxed on the thigh by appellant, causing her to fall on the muddy ground. (tsn, pp. 21-23, December 8, 1978).

"Appellant grabbed the blouse of complainant, but as the latter tried to fight back, appellant boxed her again and tried to strangle her. Complainant fell down on the ground. Appellant tried to remove her pants but she kicked him. He next took hold of her neck again, tightened his hold until she weakened and lost consciousness. Appellant then ripped off the blouse, pants and underwear of complainant and succeeded in ravishing her.

"When she regained consciousness, complainant found appellant on top of her, naked. She slowly pushed appellant. And she found herself naked and felt pain on her body, particularly her private parts. Complainant rolled down the road. She crawled on the road and overhearing a radio from the house of Esteban Lateral, she shouted for help. Esteban Lateral responded and finding complainant naked, gave her a dress and asked her to wait for the barrio captain and a councilman. (tsn, pp. 12-13, 24-26, December 8, 1978).

"Complainant was taken to the Benguet General Hospital by Alipio Cubades, her son and a niece. She was confined in the hospital from September 19 to October 2, p. 1978. A policeman was sent to the hospital, who conducted an investigation on the case. (Exhibits "B" & "C", pp. 1, 4-5, Records; tsn, pp. 17-28, December 8, 1978).

"When the barangay captain and some barrio officials arrived, they proceeded to the Barangay Road and found

appellant sitting naked from the waist downward and brought him to the barrio hall. And on September 28, 1978, after having been apprised of his constitutional rights, he gave a sworn statement to Corporal Honesto L. Pagaduan stating among other things that on the date of the incident, he was drunk and was unaware of what he did to complainant. (Exhibit "D", p. 7, Records)."

Appellant disputes the lower court's finding of force and violence having been employed by him to satisfy his carnal desire, alleging that the sexual intercourse he admittedly had with Emiliana Baas, the complainant, was with her consent, having had amorous relations with her with sexual acts together even before the incident of record. To support his claim, he gave the following reasons as reproduced in appellee's brief which We quote:

"(a) He and complainant had had amorous relations. They agreed to meet that evening of September 19, 1978 as complainant's husband had gone to Tublay, Benguet. That is why complainant did not return from Baguio with Alipio Cubades, and he waited for her at the store of Alipio Cubades and both left the store together and proceeded to their place of rendezvous without complainant asking Alipio Cubades or her son to accompany them.

"(b) Complainant did not shout when the incident took place. It was only after the incident complained of that she shouted for help to conceal her indiscretion.

"(c) Complainant was found naked after the incident.

"(d) No evidence was presented that complainant was able to extricate herself from the hold of appellant.

"(e) The prosecution failed to present the torn panty, blouse and pants of complainant as evidence. (pp. 6-10, Appellant's Brief)."

What would promptly dismiss appellant's pretensions of consented sexual act with complainant as complete prevarication is the presence of injuries, as found by the medical examiner, Dr. Isabelita R. Quiaño, on the face, nose, neck, and thighs of the complainant, which stamp the latter's testimony of how she was forcibly ravished by appellant with the impress of solid truth. The abrasions and contusions at the fourchette and tenderness of the vagina were, as explained by Dr. Quiaño, caused by the resistance to the forcible insertion of the male organ. These physical evidence of violence negate very strongly the claim of consent in the sexual intercourse.

That the incident took place when the complainant's husband had gone to Tublay, Benguet, and complainant was alone in going home from Baguio, instead of being accompanied by Alipio Cubades or her son whom she was to meet at the store of Cubades, are circumstances pointed to by appellant as proving that he had a previous understanding with the complainant as to the time and place of their sexual rendezvous.

From appellant's sworn statement taken just after the incident, he went to the Cubades' store with some companions and they had a drinking spree, and left the store at about 7:00 o'clock in the evening. He saw complainant when he was already on his way home. This fact by no means suggests a previous agreement for a sexual indulgence, specially as the complainant had gone just ahead of her son from the Cubades' store, because she had a baby left at home, and her son had to carry the rice from the store, and would just follow behind her. If he had a rendezvous with complainant for such highly intimate act as sexual intercourse, they could have mutually agreed on a more secret place than just along the road, with complainant's son expected to be coming close behind her, delayed only by the rain.

If, indeed, appellant's pretension of having had amorous relations with complainant and that the incident of record is just the latest of similar acts he had had previously with complainant is true, his sworn statement would certainly have revealed this fact as his most effective defense against what he was being accused of. And why did complainant shout for help and have her infidelity as a wife discovered, as in fact one, Esteban Lateral, responded

to her outcry, if she had a pre-arranged tryst, with full consent to the sexual act with appellant?

In his own version, appellant would want the Court believe that it was inside a hut that the intercourse was held, and because someone came with a lamp and they were lighted while "doing their thing", Emiliana ran away, and she tripped upon a branch of a tree and rolled towards the low land. He would have gone down to her rescue, but Esteban Lateral was already there (p. 5, Appellant's Brief).

It is with this story, evidently a mere afterthought, since he did not relate it in his sworn statement, that he would explain the injuries sustained by complainant, which, to say the least, is manifestly preposterous. Just running away would not have kept her conjugal apostasy from being discovered with appellant. Half naked when left behind, appellant would have had no choice but to reveal, upon inquiry, who his mate was, and who in any case, could not also run away far, nude as complainant was.

Testifying for the prosecution, Esteban Lateral stated that he merely responded to the shout for help of complainant from his house, belying the story of appellant of how someone came with a lamp and lighted them when they were "doing their thing", causing complainant to run away. From how appellant pictured complainant's reaction to having been caught in the act, the latter would want to prevent discovery of her marital infidelity. Yet, Esteban Lateral, unquestionably an impartial witness, would convey just the contrary, for complainant even shouted for help to which Lateral responded from his house, gave the naked complainant a dress, and after hearing complainant's tale of woe, fetched the barrio captain to arrest the appellant whom they found sitting by the Barangay Road, naked from the waist down.

The nakedness of complainant after the incident is, likewise, pointed to by appellant as indicating her consent to the sex act. On the contrary, if there had been mutual consent thereto, why was not complainant properly attired after the act, instead of being naked that Esteban Lateral had to give her a dress when told to wait for the barrio captain Lateral went out to fetch? As already shown by Lateral's testimony, his attempt to explain why complainant was naked because of their being surprised in the act, is patently futile. Nobody surprised them. She merely sought succor and shouted when she heard the sound of a radio.

As to the nonpresentation of the blouse, pant and panty of complainant which were allegedly torn, this could be a mere oversight. On the part of the prosecution, by no means of any significant effect, since there was enough evidence that could hardly be rebutted, that indeed these garments were torn and were turned over to the possession of the police authorities, and that without need of presenting them, the case of the prosecution had already been built up firmly, unshaken in the least by the very unnatural and incredible story appellant offered plainly as a lastditch defense.

It is clear beyond doubt that the story narrated by complainant is what truly happened, spontaneous as it was when she told it to Lateral just after the assault, without any opportunity for concoction, and as the account was put in writing (Exhs. "B" and "C") when she was investigated at the hospital. In contrast, appellant's tale lacks the spontaneity that would lend to it credence, as the trial court, with its opportunity for personally observing appellant's demeanor in testifying, obviously gave none of it to his testimony, which was at complete variance with his sworn statement taken just after the incident and which he admitted to have signed voluntarily.

WHEREFORE, finding no reversible error in the judgment appealed from, the sentence of reclusion perpetua imposed, as the penalty prescribed for the crime committed, being of a nature that admits of no appreciation of either aggravating or mitigating circumstance, for which consideration of whatever modifying circumstances there may be in the instant case would be of no legal purpose, We hereby affirm said judgment in toto, with costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and Abad Santos, JJ., concur.

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