

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO SATO ALIAS JUNIOR AND ALFREDO SASUTA, ACCUSED, ALFREDO SASUTA, APPELLANT.

G.R. No. L-47911. July 27, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from a judgment[1] of the lower court in Criminal Case No. CU-1685, Court of First Instance - Cebu, entitled People of the Philippines vs. Ricardo Sato alias Junior and Alfredo Sasuta, finding both accused guilty beyond reasonable doubt of the crime of Rape, sentencing each of them to suffer the penalty of Reclusion Perpetua; to suffer the accessory penalties provided for by law; and to pay the costs of the proceedings. The accused, being detention prisoners, were granted the full credit of their preventive imprisonment in accordance with R.A. 6127.

While the case was pending before Us, accused Ricardo Sato alias Junior Sato filed his “Motion For Withdrawal of Appeal” dated June 8, 1982 which was granted by this Court by virtue of Our resolution dated September 13, 1982. Accordingly Entry of Judgment was then made in his case. Hence, under consideration is only the appeal of accused Alfredo Sasuta, who raises the following:

ASSIGNMENTS OF ERROR

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF RAPE CHARGED ALTHOUGH THE EVIDENCE FOR THE PROSECUTION FAILS TO ESTABLISH THE GUILT OF THE ACCUSED-APPELLANTS BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF RAPE ALTHOUGH THE EVIDENCE FOR THE PROSECUTION IS HIGHLY IMPROBABLE AND IMPOSSIBLE THAT THE ACCUSED-APPELLANTS COMMITTED THE CRIME OF RAPE.

III

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF RAPE CHARGED ALTHOUGH THE EVIDENCE FOR THE PROSECUTION IS INSUFFICIENT TO HOLD THE ACCUSED-APPELLANTS LIABLE FOR THE CRIME OF RAPE.

It is the theory of the prosecution that in the morning of February 11, 1975, the complainant Felomina C. Sato, her husband Catalino Sato, and their 8-year old son, Jose Sato went to Sangi, San Fernando, Cebu to sell goats.

In the afternoon of that same day, the complainant and her companions went home to Barrio Lunas, Carcar, Cebu.

When they reached Bo. Pit-os, Carcar, they met the accused. Without warning Ricardo Sato alias “Junior” hit Catalino Sato on the ear, rendering the latter unconscious, while appellant Alfredo Sasuta stood by. Immediately after, appellants assaulted the complainant and took turns in sexually abusing her, Junior Sato being the first and Alfredo Sasuta after him. After consummating their sexual desires, the two fled.

After her husband regained consciousness, complainant told him what had transpired. The following morning, they left for Carcar to report the matter to the police authorities thereat. Her husband was treated while she was examined by a doctor.

Appellants put up the defense of alibi alleging that they were somewhere else when the crime was committed.

In their assignments of errors, the defense relied heavily on the absence of human spermatozoa in the sex organ of the complainant; absence of injury suffered by the complainant; lack of physical struggle to overcome the force employed by the culprits; and absence of evidence that the culprits used a weapon to intimidate sexually the complainant.

The contentions of appellant hold no water.

That Jose c. Tuian, the NBI Medical Technician, testified that he found no spermatozoa in the smear taken from the cervix is immaterial in the crime of rape. What is essential in this crime is evidence of penetration of the offender’s sex organ into the complainant’s sex organ. It is not necessary that the offender ejaculated or reached orgasm. Well settled in this jurisdiction is the rule that any penetration whether reaching the hymen or not is sufficient to constitute the crime of rape, such as in the case at bar.[2] Furthermore We cannot discount the possibility that the sperms in the smear had already died at the time of the NBI examination, that is after the lapse of several hours after the commission of the crime of rape.

The lack of indication of the use of force like finger grips, physical injuries and hematomas on the complainant is not incompatible with the consumption of the crime of rape. Worth mentioning in this regard is the ruling of the trial court that:

“Lack of laceration, abrasion, thorasis in the genital of Rape (People of the Philippines vs. Canastra, L-2055, 82 Phil. 480), for it was bot through physical force that the resistance of the victim of the crime of Rape could be overcome. Fear may also produce that effect and in this case, there is evidence that the complainant, much to her futile resistance, could not but fall pray to the carnal desires of both accused, firstly, because complainant’s husband was already rendered unconscious, and, secondly, the striking of her thighs, in most probability, had produced not only physical sufferings through pain but even stronger force of fear.” (p. 11, Decision Crim. Case No. CU-1685, p. 17, Rollo).

This ruling is consistent with Our statement in People vs. Momo, 56 Phil. 86 that “when force is an element of the crime of rape, it need not be irresistible; it need but be present, and so long as it brings about the desired result, all consideration of whether it was more or less irresistible is beside the point.” Thus, it is not even necessary in rape that the offender in using force was armed with a weapon with which to intimidate the complainant. The use of a deadly weapon serves only to increase the penalty.

Finally, appellant assails the credibility of the witnesses for the prosecution because of inconsistencies in their testimonies given during the preliminary investigation and during the court proceedings. These inconsistencies can be disregarded without impairing their credibility considering that they are uneducated and unlettered barrio folks. Moreover, it is clear from the testimony alone of Jose Sato, an 8-year old child who witnessed the incident, that accused Junior Sato and Alfredo Sasuta committed the crime charged against them as evident in the following:

Testimony of Jose Sato:

“Q.

After your father was hit by that blow made by Junior, and your father fell down, bleeding, what did the two accused to next? (TSN-Cavalida, Jan. 9, 1975, p. 6)

“A.

They assaulted my mother (ibid p. 6)

“Q. What kind of assault was made by the two accused on your mother? (ibid p. 6)

“A. Junior and Fredo placed themselves on top of my mother (ibid p. 6)

“Q. Who of the two accused placed himself on top of your mother first? (ibid p. 6)

“A. Junior and after that, Fredo (ibid p. 6)

“Q. After assaulting and placing themselves on top of your mother one after the other, the two accused ran away? (ibid p. 6)

“A. Yes, sir.” (ibid p. 6) (pp. 7-8, Appellee’s Brief)

Apropos thereto, the trial court states:

“x x x The innocence of an 8-year old boy who was subjected to watching the horror of a helpless father while his mother was being abused cannot be taken but lightly. Despite the hesitance to utter the term for sexual intercourse by his own tongue, yet Jose Sato manifested the candor of the thoroughly unbiased as only a child, a pure intellectual, as it were, can be capable of. In so many ways he drove home to the mind of the Court, strongly corroborating the complainant’s charge of her being raped, that sexual intercourse were, indeed done by the accused on her overwhelmed helpless mother; Jose Sato described to the Court that the accused, one after the other, mounted his mother who was forced to lie on her back on the ground. He testified in Court as impressively as would be all that was necessary for the conviction of both accused.

“x x x

x x x

x x x

“Moreover, such minor inconsistencies of the testimonies of the complainant and Catalino Sato are but

innocent mistakes which do not set delve to the very core of the act complained of. The impressive corroboration by complainant's mom, Jose Sato, who was then present during the commission of the crime in all material points is all that is needed for the conviction of both accused." (pp. 14 & 15, Decision Crim. Case No. CU-1685, pp. 85-86, Rollo)

The defense of appellant is alibi. In order that the defense of alibi can prosper, it must be so convincing as to preclude any doubt that the accused could not have been physically present at the place of the crime or its vicinity at the time of its commission. Appellant Alfredo Sasuta's assertion that he was at home in Nag-arco, San Fernando, at the time of the incident doe not preclude the possibility of his being present at the scene of the crime because San Fernando is just an adjoining town of Carcar where the incident took place. Moreover, alibi, being a weak defense, cannot prevail over the testimonies of prosecution witnesses Jose Sato and complainant who positively identified the appellant as one of the perpetrators of the crime.

WHEREFORE PREMISES CONSIDERED, the guilt of the appellant Alfredo Sasuta having been proved beyond reasonable doubt, the decision appealed from is hereby **AFFIRMED**, but the appellant is ordered to pay P20,000.00 as civil indemnity to the victim.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Sarmiento, JJ., concur.

[1] Penned by Judge Rafael T. Mendoza.

[2] People vs. Hernandez, 49 Phil. 980.

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