

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO BAUTISTA Y APARICE ALIAS ANDOT,
DEFENDANT-APPELLANT.**

G.R. No. L-49778. January 27, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Charged with rape committed according to the information, as follows:

"That on or about July 13, 1976, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, while herein undersigned complainant was unconscious and/or deprived of her reason or will, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant against her will." (p. 6, Rollo).

Alejandro Bautista y Aparice alias Andot was found guilty and sentenced to reclusion perpetua and to pay the complainant the sum of P20,000.00 as moral damages, and costs. Accused Bautista has appealed to this Court.

Quoting from appellee's brief, the crime was committed as follows:

"The complainant Remedios Abalayan was according to the description of the court a quo, an attractive woman, 33 years old, married, with two children. (Decision, p. 2). In the afternoon of July 11, 1976, suspicious of the behavior of her husband, she and her mother-in-law went to the residence of appellant Alejandro Bautista at Mangahan, Toril, Davao City. Appellant was a well-known fortune teller and faith healer. (t.s.n., 66-68).

"Abalayan consulted appellant regarding her husband. Acting as though he knew whereof he speak, appellant told Abalayan that her husband was at that moment somewhere at Bajada with his girlfriend. Appellant offered to use his powers to protect Abalayan against the possibility of losing her husband to the other girl. (id., 70-71) Appellant produced a bottle of potion which he made Abalayan drink. She momentarily felt weak. Appellant then performed a ritual whereby he tied strips of red cloth around his head and neck, rang a small bell and recited some incantations while a daughter played the guitar. (Id., 69-70)

"Before Abalayan left, appellant told her to bring the following day a picture and some unwashed clothings of her husband which appellant would cleanse of evil spirits. (Id., 71-72) Appellant asked for P230.00 as payment for his services, although Abalayan was able to pay only P200.00. (Id., 72-73)

"The following day, July 12, 1976, Abalayan returned with her mother to the residence of appellant. Abalayan performed the same ceremony he did the day before and gave Abalayan another dose of potion. (Id., 74-75) He pretended to treat with smoke the unwashed clothings and picture of Abalayan's husband. After these, appellant told Abalayan to return the following day for a trip to a remote cave where the ritual would be repeated for better effects. (Id., 76-77)

"Early in the morning of July 13, 1976 Abalayan returned to appellant's residence in the company of her mother. After some waiting, appellant's passenger jeep, driven by his son Fernando, arrived. It was this that they used in going somewhere near Mt. Apo. (Id., 78-79) When they reached a place planted to sugar cane, they alighted. (Id., 79-80) Appellant told Abalayan that only she should come with him to the cave which was located down the hill behind some trees. This was necessary, according to appellant, in order that the ceremony could produce better results. (Id., 80-81)

"Appellant and Abalayan followed a descending trail that led to a cave which was isolated and concealed from any possible spectator. (Id., 81-82) Here appellant brought out the clothings and picture of Abalayan's husband and gave them to Abalayan to hold. Appellant then made smoke with his paraphernalia. After this, he produced a plastic sheet secreted in the cave and spread it on the ground. (Id., 82-84) He then brought out linen from the bag he carried with him and spread it on the plastic sheet. He told Abalayan to lie down on this so he could blow some medication on her stomach. She obeyed him. (Id., 84.)

"Appellant told Abalayan to unzip her pants in order that his medicine could reach her navel. After she did, however, appellant began to touch her breast and her genitalia. This surprised Abalayan who immediately stood up and zipped her pants. She told appellant that she could not agree to his kind of treatment. (Id., 84-85) Appellant explained that Abalayan should understand his acts as part of the ritual that had to be done to save her husband from another woman. Appellant suggested that the treatment would be all the more effective if he could have sexual intercourse with her.

"Because Abalayan rejected the suggestion of sexual intercourse, appellant proposed to instead give her a potion which, according to him, achieve the same ends although in a somewhat slower manner. Abalayan took the potion proffered to her. (Id., 85-87) Soon after, she felt dizzy and weak. While she remained conscious, she experienced a sudden loss of control over her person. She was in this state when appellant ordered her to take off her pants. And she obeyed him. He then abused her. (Id., 87-89)."

Bothered and unable to sleep the evening following the incident, she reported the matter the following day, July 14, 1976, to her older brother and to her mother who later filed a complaint against appellant with the PC, CIS. Complainant had herself examined on two occasions by Dr. Leonardo Bascara, a neuro-psychiatry, and specialist in psychanalytic and psychosometric neurology as well as in medical hypnosis.[1] In the first session Dr. Bascara subjected her to a pre-association or orthodox mode of psychoanalysis, while in the second, he placed her under hypnosis.[2] According to the doctor-specialist, complainant was telling the truth regarding the rape by a faith-healer who administered to her a psychedelic drug that deprived her of her will and who placed her under his hypnotic power. In her state of mind, Dr. Bascara further testified, complainant was deprived of reason, unable to resist the sexual advances of appellant.[3]

Relying on the laboratory finding made at the Davao General Hospital that after a pop smear made in the evening of July 14, 1976, complainant was found negative for spermatozoa, appellant would deny the commission of rape

on complainant in the morning of the previous day, as charged. Appellant's contention of the alleged impossibility of the rape having been committed with no sign of spermatozoa on complainant, as found by a laboratory examination, is unavailing in the light of repeated rulings that the absence of spermatozoa does not necessarily mean that the alleged victim has not in fact been raped.[4] In the present case, the period of almost one and one-half day, or 36 hours, is long enough for the spermatozoa to have already died when the pap smear was made, medical opinion being that the organism may not last more than 24 hours.[5]

Other circumstances that might explain the negative finding of spermatozoa is the possibility of an unsuccessful emission on the part of appellant, being already in the rather advanced age of 58 at the time, and conscious of the presence of persons close to the scene, including the victim's mother. The possibility of complainant having washed or flushed herself to prevent conception cannot also be ruled out, such a cause for the absence of spermatozoa despite the actuality of the rape, having been suggested in one case by this Court.[6]

In any case, slight penetration even without emission, is sufficient to convict for rape.[7] By the positive testimony of complainant, such penetration did take place. She said she felt there was penetration. This is very likely, indeed with her having already borne two children, thus making entry or penetration relatively easy.

Appellant, however, next suggests consent on the part of the complainant to the sexual act, pointing to the complainant's reaction to his sexual advances as not constituting any serious resistance thereto, such as allowing him to fondle her private parts and not immediately stopping the ritual even after he had asked for sexual intercourse, but instead showed cooperation when she drank the potion offered to her as an alternative of the sex act.

The above pretensions of appellant are not true. Complainant did not for a moment tolerate the indecent acts of appellant. She drew herself away from him instantly and protestingly when appellant started to touch her private parts, and angrily rejected the proposal for sexual intercourse by standing up and zipping close her pants. If she agreed to take the potion proffered as a substitute for the sexual intercourse, it was only because she has not lost her belief in appellant's sincerity in trying to help her with what was increasingly his widening reputation to have been endowed with mystic power of faith-healing and fortune-telling. Certainly, the victims taking the potion as she had done on two previous occasions was not by any means to show her agreement to appellant's indecent proposal. She evidently thought that the potion-drinking ritual, accompanied by incantations and prayers, would not be followed by a sexual assault as the two similar rituals referred to had in appellant residence were not. But in the privacy of the well-hidden cave, appellant revealed his true lewd designs as had evidently possessed him even before, during the first two sessions, which he now could give full vent to, within the confines of the cave, with no one to stop or reproach his sinister proceedings, once the potion he made complainant drink would show its effect, which was to deprive complainant of reason and the will to resist appellant's sexual assault. The effect is thus similar to that of violence in overcoming resistance with which she could very well have successfully thwarted the lustful attack. Appellant, undoubtedly had clearly committed the crime charged by depriving complainant of reason to be able to have carnal knowledge of her[8] without the latter having in the least shown any sign of consent. If she did, she would not have angrily rejected appellant's proposition to have sexual intercourse with her, and instead of reporting the assault on her to her mother and brother, with certain knowledge of proper complaint being filed which would be followed by medical examination of her body, and the ordeal of a public trial in which she would expose her honor and reputation, she could just have kept the sexual indulgence a tightly guarded secret, as she would have done if she had submitted herself willingly thereto. Characteristic of the modesty in Filipino womanhood, she would have preferred to preserve an unsullied reputation for marital fidelity by keeping silent, if she felt she had, to any degree, shared in the moral culpability inherent in the act of sexual intercourse with a man other than her husband.

The absence of any motive to place in jeopardy her prized possession of womanly virtue, as none whatsoever has been shown, gives solid credibility to complainant's testimony. The slight discrepancy between her affidavit taken just after the incident (Exhibit 1) and her testimony as pointed out by appellant is, therefore, utterly insufficient to impeach her credibility, which is that of having failed to mention in her affidavit about her taking of the potion, and merely stating therein that appellant put oil on the tips of his finger and with it touched her lips. She explained this discrepancy by stating that she had not yet fully recovered her senses when she gave her statement.[9] She could very well have added in explanation that she feared being branded as stupidly credulous for willingly taking that potion in her desire to seek help from appellant in the solution of her problem, as this Court perceives, from the facts duly proven, that she did not want being credited with so such naivete. Further explanation may be found in the fact already of judicial notice, that affidavits generally suffer from incompleteness and inaccuracy.[10] Thus explained, the discrepancy pointed out with so much stress by appellant, cannot discredit complainant's testimony specially considering that the taking of the potion was a fact admitted by appellant himself when he claimed the act as allegedly indicative of complainant's cooperative reaction to his proposal of sexual intercourse.

The award of moral damages which is the subject of appellant's last assignment of error, based on alleged lack of evidence supportive thereof is legally justifiable. As a victim of rape, complainant undeniably felt mental anguish and distress. And having to face public trial that would expose the lurid details of her unhappy experience, that too had the effect of besmirching her reputation to warrant the award of moral damages, an inseparable liability to the punitive portion of the sentence imposed on all convicted rapists.

In view of the penalty of the crime charged, which is indivisible, there need be no discussion of the attendant circumstances which would not vary the properly imposable penalty - reclusion perpetua.

WHEREFORE, the judgment appealed from, being in accordance with law and the evidence, same is affirmed in toto, with costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

[1] pp. 215-223, t.s.n.

[2] pp. 223-224, t.s.n.

[3] pp. 229-245, t.s.n.

[4] *People vs. Jose*, 37 SCRA 480; *People vs. Carandang*, 52 SCRA 259; *People vs. Selfaison, et al.*, 110 Phil 839, 846-847 [1961].

[5] Solis, *Legal Medicine*, 1964 Ed. p. 357.

[6] *People vs. Selfaison, et al.*, *supra*.

[7] *People vs. Royeras*, 56 SCRA 666; *People vs. Amores*, 58 SCRA 505; *People vs. Selfaison*, *supra*.

[8] Article 335, Revised Penal Code.

[9] pp. 147-148, t.s.n.

[10] *People vs. Alcantara*, 33 SCRA 812, 830.

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