

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO MOREDO, DEFENDANT-APPELLANT.

G.R. No. L-34127. January 30, 1984

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This is an appeal from the decision of the Court of First Instance of Batangas, Eight Judicial District, Branch VII, Balayan Batangas, convicting appellant, Antonio Moredo, of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, to recognize the offspring and to pay the costs.

Succinctly stated, the facts as quoted from the People's Brief,[1] are as follows:

"On January 10, 1970 at about 2:00 o'clock in the afternoon, while Flocerfida Salazar was alone, lying in the second floor of her house at Barrio Ilog, Taal, Batangas, appellant went up the house and suddenly embraced her (pp. 2-3, t.s.n., December 2, 1970). Although crippled, the latter resisted by pushing appellant, and struggling to be freed from his embrace (p. 3, id.).

"Despite said resistance, however, appellant was able to raise Flocerfida's dress and to remove her panty. Afterwards, appellant was able to consummate his carnal desire in spite of the resistance put up by Flocerfida, who fought back with her hands (p. 3, id). While the appellant was on top of Flocerfida, he threatened the latter that if she would shout, he would kill her (p. 4, id.). In view of said threats, Flocerfida was not able to shout for help.

"Afraid of the serious threats made by the appellant on her life and fearing that her father might kill the accused if she were to tell her father about the incident, Flocerfida kept the matter to herself until June 25, 1970 when she informed her parents, thru her godbrother Jeremias Pagcaliwagan, about the sexual assault against her (p. 5, id.).

"The incident was reported to the Police Department of Taal, Batangas whereupon appellant was invited for questioning. During this investigation, appellant voluntarily executed an affidavit wherein he admitted having sexual intercourse with the complainant, but claimed that the same was committed with the consent of Flocerfida because they were in love with one another (Exhibit "A")."

In his defense, appellant claimed to have performed the sexual act or acts with the consent of the complainant who was his sweetheart. The question presented in this appeal is therefore, one of credibility.

The complainant spoke with simple candor when she explained the delay in informing her father of her sad experience. She was threatened with death, and she also wanted to avoid her father being involved in a case. Her father might kill or be killed in an inevitable confrontation if she reported the matter to him. Similar cases of delay caused by similar circumstances, specially threat of death, have not deterred this Court in believing the story of rape victims.

Minor flaws in her testimony have been unduly stressed by appellant to destroy the credibility of complainant. As thoroughly explained by the Solicitor General, these supposed flaws are minor contradictions and inconsistencies

which are hallmarks of sincerity and candor, rather than showing a desire to willfully falsify.

We quote from the People's Brief[2] the following:

"The first query posed by appellant is thus: 'How could the accused possibly hold the two hands of the complaining witness, while his left hand is removing the panty and the right hand holding the knife at the same time?'

"To start with, the victims lower extremities are totally crippled; she could only utilize her two hands to resist the advances made against her. Considering that circumstance, it was not difficult for the appellant to pin down with his left hand the victim's two hands held at the wrists while the right hand, holding the knife, was used in removing the victim's panty. That circumstance was testified to by the complainant in her following statements:

"Q. - How long did Antonio Moredo remain on top of you?

A. - About a minute.

COURT:

Q. - What were you doing during that one minute?

A. - I could not move because he pinned both my hands. (t.s.n., p. 4, Dec. 2, 1970).'

"In any case this is not of vital relevance because of the threats employed. The fact is that the victim was not only freed but intimidated into submission. The second point raised by appellant is as follows:

'If it is true that the complaining witness was resisting at the time the act was being committed, would it be possible to have accomplished the whole act from the time that the accused approached her up to the time that the act was consummated, happened only for three minutes?'

"On this score, it must be stated that, almost invariably, the common layman's approximation of the length of time is inaccurate (People vs. Demetrio, 47 O.G. No. 12, Supp. 23; 86 Phil. 344). It is more so where the estimate comes from an uneducated (p. 6, t.s.n., Feb. 1, 1971) rural folk like the victim in this case who, because of her physical defect, seldom leaves her abode.

"But even assuming, arguendo, that the whole act took place in three (3) minutes, we submit that it was not impossible for appellant to have committed the heinous crime within said length of time. It must be noted that, according to the complainant, the appellant remained on top of her having sexual intercourse with her in about a minute (t.s.n., p. 4, Dec. 2, 1970, quoted supra). Thus, the struggle and the removal of victim's panty took place in two (2) minutes. We find nothing impossible in this.

"The next object of appellants attack is the complainant's allegation that the appellant was carrying an open knife. Thus he claims:

'3) Flocerfida Salazar obviously lied when she stated on cross-examination that the accused was carrying an open knife, because this alleged knife was not mentioned by her in her statement given to the Police nor was it mentioned in her testimony during the direct examination.'

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'7) This witness lied unexcusably when being pressed for an explanation of her failure to call for assistance, she said, apparently as an afterthought, that the accused was carrying an open knife.

'8) It is still more difficult to understand why the complaining witness omitted all references to the accused allegedly carrying an open knife in her main testimony.'

"It will be noted, however, that in both her statement to the municipal judge (Exh. B) and in her direct testimony in court, no question whatsoever was asked about whether or not the appellant was carrying an open knife. However, when the question was asked her point-blank on cross-examination, the theretofore unrevealed fact came out. The testimony of the victim on this score is as follows: 'Q. What was that?

A. Knife which is about this length (witness indicated a length of about six inches.)

Q. So he was carrying a knife on that day?

A. Yes, sir.

Q. Did you tell this to the authorities when you were investigated on June 26, 1970 that Mr. Moredo was carrying a knife?

Mr. Fiscal:

Misleading.

Q. Assuming that you were investigated on June 25, 1970, did you tell it to the authority that Moredo was carrying a knife at the time that you were raped?

A. No, sir.

Q. You did not also tell this to the municipal judge when you were investigated on June 30, 1970 is that correct?

A. No, sir.

Q. And you only told this before this Honorable Court for the first time?

A. Yes, sir.' (t.s.n., pp. 8-9, December 21, 1970).

"To our mind, the aforequoted testimony of complainant to the effect that her statement about the knife was given for the first time to the court is not indicative of deliberate falsehood. It bears, instead, the hallmarks of truth.

"Equally unavailing is appellant's contention that:

'It is unbelievable that Judge Rodolfo Dimaano visited her on June 25, 19 and 30, 1970 and yet went to her house only once.'

"For ready reference and perusal, the testimony of the victim being assailed by appellant is as follows:

'Q. Do you ever remember having subscribed this statement before Judge Dimaano?

A. Yes, sir.

Q. When was that?

A. On the 25th.

Q. Where did you swear (sic) this?

A. In our house.

Q. And Judge Dimaano went to your house on June 25, 1970?

A. Yes, sir.

Q. But Judge Dimaano went to your house also one June 30, 1970 at 5:00 o'clock in the afternoon, is that

correct?

A. Yes, sir.

Q. How many times did Judge Dimaano go to your house?

A. Only once.' (t.s.n., pp. 6-7, Dec. 21, 1970).

"It is easy to see that the apparently inconsistent statements are not far removed from each other. Aside from the possibility of error in transcription, the witness might have, in answering the last question, the impression that the question asked called for the number of times that Judge Dimaano went to her house on that particular day of June 30, 1970.

"But even assuming, arguendo, that the victim committed a mistake in her testimony, aside from the fact that it is on a matter of minor importance, it is mainly attributable to the fact that, being unschooled, she must have fallen into confusion on the witness stand. But as this Honorable Court has aptly observed:

'As to the alleged contradictions and uncorroborated improbabilities, aside from the fact that they were on matters of detail and of minor importance, they were mainly attributable to mere lapses of memory that are of daily occurrence to witnesses who are called to testify on incidents that have happened sometime prior to the trial of a case. They were mistakes and not deliberate falsehoods. The most candid witnesses oftentimes make mistakes and fall into confused and inconsistent statements (Kohler vs. Penn. R. Co., 135 PA. St. 346, 19 Atl. 1049), but such honest lapses do not affect their credibility. Their contradictions on unimportant details do not destroy the effectivity of their testimony (People vs. Limbo, et al., 49 Phil. 94; People vs. Otero, 51 Phil. 201). Such trivial and insignificant contradictions, short in weight to tip the balance in favor of the appellant, can be reconciled easily with the rest of the circumstances without upturning the illation and appreciation of the evidence by the court a quo. People vs. Fernandez, CA-G. R. Nos. 183-186-R (L-582-585), Feb. 15, 1947; 43 O.G. 2175.'

"Clutching at the last straw, appellant makes capital of the following alleged inconsistent statements of the victim:

'Q. Do you want also to convey the Court that this incident between you and the accused was not by him and that it was only on January 10, 1971 when he raped you and after that he did not go back to you?

A. It was repeated.

Q. When was it repeated?

A. I can no longer remember the date.

Q. You cannot even tell us how many days or months after January 10?

A. No, sir.' (t.s.n., pp. 6-7, Dec. 2, 1970).

Q. And you want to confirm that another intercourse happened after January 10, 1970?

A. Yes, sir.

Q. When was that?

A. I do not remember the date.

Q. Was it one week, two weeks or one month after January 10, 1970?

A. May be about a week after January 10, 1970.

Q. And the second time you were also alone, is that correct?

A. Yes, sir.' (t.s.n., p. 10, Dec. 21, 1970).

"Since our previous observations relative to the visit of Judge Dimaano are still relevant, we are incorporating said observations herein by reference.

"In addition, the quoted statements are not totally irreconcilable. It is significant that in her answer to the last question of the court, complainant only made an approximation of the length of time that elapsed from the date of the first sexual assault.

"Likewise devoid of merit is the contention that "it is incredible that she did not utter a single word or make any kind of outcry when she was being raped." Considering that as adverted to hereinabove, complainant was, when being raped, subjected to serious threats against her life, she was not able to cry for help.

"Finally, appellant assails the trial court for not considering filing of the complaint against him. This, of course, is error. The claim that "complainant's silence for six months after the commission of the crime indicates that there was no force employed against her," was considered by the court in the Decision on Appeal. As found by the court (*supra*) the delay was sufficiently explained by the complainant herself. In her statement in court (p. 5, t.s.n., December 2, 1970), complainant said that she feared not only the threats of the appellant against her life but also the possibility that her father might be involved in a case, whether as the aggressor or as a victim, should confrontation between the appellant and her father ensue.

"In addition, the special circumstance that the victim in this case is totally crippled should be taken into account.

"Likewise the fact that the appellant lives in the same house where the victim resides (p. 8, t.s.n., Dec. 2, 1970) and was, therefore, able at all times to observe closely the actuations of the complainant cannot just be ignored. Complainant's pathetic situation of being under the close and constant watch by appellant must have so adversely affected her willpower to disclose her unfortunate defoliation. She was the easy and immobile prey of the ruthless malefactor that hovered above her. Appellant was like the proverbial "sword of Damocles" ready to fall on the head of the helpless victim the moment she shows the least sign of revealing the dastardly crime to any possible protector. Thus, the explanation given by the complainant that she was afraid of revealing the matter to her parents and to the authorities becomes all the more credible."

On the other hand, complainant would not like to enter into an illicit relation with one she knows is a married man whose marital abode is just a few meters away. In fact, appellant tried to prove their relationship through letters, but the supposed letters were never presented in evidence. His love relation with complainant carried on with letters is ridiculous. As the trial court stated on this particular point:

"Neither could the court doubt the sincerity of the complainant when she denied giving consent to the sexual intercourse because while the accused tried to establish this fact, his testimony and those of his witness in this point are utterly incredible. For example the court can not believe that the accused had used his own daughter to write his letters to the complainant. This is indeed foolish and ridiculous to require further discussion. Neither can the court believe the testimony of Teresita Moredo, daughter of the herein accused when she stated that the complainant used to tell her problems and had requested her to write letters for her addressed to a certain Tony. In this connection, it is important to remember that on cross-examination Teresita Moredo admitted that she had suspected that the Tony referred to in the letters she wrote for complainant, was her own father. Certainly, the complainant could have secured the help of other persons to write letters for her. But not the daughter of the accused. Then again, we have the testimony of Zenaida Lumaban who claimed that she also write letters for the accused and those letters were addressed to a certain Susan. The defense however, has not established why the name Susan was used in lieu of Floerfida. Besides when asked to recollect any phrase she had written in the various letters which she wrote for the accused, Zenaida Lumaban could not remember any."[3]

If appellant and complainant were sweethearts, within the period of six months from the first intercourse to the time complainant informed the father, they would have indulged in the sex act surely more than 10 times as appellant declared, although at one instance he said he did the act only once. Again complainant appears more credible when she consistently said the act was repeated only once.

Additionally, the trial judge gave more credibility to the testimony of complainant whom he saw testifying before him. It is trite to say that the judgment of the trial judge on the credibility of witnesses is entitled to high respect, and should not be disturbed except on the most compelling reasons which in the instant case, do not exist.[4]

The physical condition of the complainant adds to her credibility. She could hardly have been the object of a suit to gain her love, and she may not have in turn believed the sincerity of the suitor for the supposed love relation, to be developed by letter-writing, as appellant claims but denied by complainant, considering that both of them can neither read nor write. The pretense of consent as pleaded by appellant cannot but reveal itself as a last minute defense, which under the circumstances pointed out above, cannot outweigh the candid and sincere statements of complainant showing her to be a victim of rape.

WHEREFORE, the judgment of the trial court is affirmed with the modification that the accused shall also indemnify Floerfida Salazar the sum of twelve thousand (P12,000.00) pesos. Costs against the accused.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

[1] pp. 1-3, Brief for the Appellee.

[2] pp. 8-18, Brief for the Appellee.

[3] pp. 6-7, Brief for the Appellee.

[4] *People vs. Villamala*, 78 SCRA 145; *People vs. Mauro*, 117 SCRA 869 citing *People vs. Espejo*, 36 SCRA 401.

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