

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUPERTO TAPAO, DEFENDANT-APPELLANT.*G.R. No. L-41704. October 23, 1981*

Ponente: CONCEPCION JR., J.

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Appeal from a decision of the Court of First Instance of Bohol.

The appellant, Ruperto Tapao, was charged before the Court of First Instance of Bohol for having allegedly raped Aurea Hangad, a thirteen-year old unmarried barrio lass on April 23, 1974, in the municipality of Balilihan, Province of Bohol. Judgment was rendered in the case on August 7, 1975, whereby the said appellant was sentenced, under the charge aforesaid, "to reclusion perpetua and to indemnify the complainant, Aurea Hangad, the sum of Five Thousand (P5,000.00) Pesos in concept of moral and exemplary damages," and to pay the costs.

The evidence for the prosecution, as succinctly summarized by the trial court, is, as follows:

"At about 10 o'clock that morning of April 23, 1974, the 28-year old accused, who is well-known to Aurea (as his wife is the niece of the father-in-law of Aurea's father), went to the house where Aurea lives. Aurea was left alone in the house together with her 2-year old half brother who was then sleeping in the hammock under the house; her grandfather was threshing palay in the field; her brother, Vir-gilio, had gone out to the house of their neighbor. The nearest house is about 55 meters. Previous to that date, the accused had gone to the house of Aurea's grandfather as he tilled a ricefield near-by. The accused first looked at the pictures, then he sat beside Aurea on the bench and as Aurea transferred to the sofa, he sat beside her. He held Aurea's hands and Aurea struggled in vain to extricate herself. He proceeded to lift and place her on his lap and then carried her to the kitchen some 8 meters away. He placed her down and, despite the resistance put up by her, by sheer superior force he removed her pantie, placed himself on top of her, and inserted his penis into her vagina. Aurea experienced extreme pain upon penetration. She was unable to shout for help as the accused placed a handkerchief into her mouth. After the sexual act, he warned her not to tell anybody or he would kill her.

"On May 1, while Aurea was with her cousin, 13-year old Erlinda Andig, in the house the accused arrived. He asked Erlinda to go home. Aurea did not allow Erlinda to go. As Erlinda refused to get out, the accused sat beside her, held her hands, and placed them over his unexposed penis. Erlinda pulled away her hands. A moment later, the accused went home. On that occasion Aurea revealed to Erlinda that the accused had raped her before. This revelation was transmitted by Erlinda to her mother and it was the latter who told Aurea's father. Late in the afternoon of Sunday, May 5, 1974, at the house of his parent-in-law where Aurea stayed, Aurea's father verified from her and was told by Aurea about the rape on her by the accused on April 22. The following day, May 6, he brought Aurea to the PC Headquarters at Tagbilaran where a formal charge was made. Aurea was interrogated and her sworn statement (Exhibit A) taken. On the same day she was physically examined at the Bohol Provincial Hospital where it was found that her vaginal canal easily admitted one finger and there were healed lacerations at 6 o'clock and 1 o'clock on her external orifice of the vagina (Exhibit C). On May 20, 1974, Aurea filed a verified complaint for rape (Exhibit B) against the accused.

"Aurea explained that she did not tell her grandfather and father soon after the accused raped her because she

was afraid as the accused threatened to kill her if she would tell anybody."[1]

The appellant assails the said decision, claiming among others, that no rape has been committed since the offended party, Aurea Hangad, did not offer much resistance when she was allegedly ravished by the appellant, hinting that she was a willing victim to the sexual act.

There is merit in the appeal. The evidence adduced by Aurea Hangad in support of her claim that she was abused by the appellant, Ruperto Tapao, against her will, consists of her own sole and uncorroborated testimony. The rule in this jurisdiction is that a charge of rape based upon the sole testimony of one who complains of rape should be regarded with utmost caution and that the person charged with the offense should not be convicted unless the complainant's testimony is impeccable and rings true throughout.[2] In the instant case, the complainant's uncorroborated narrative invites criticism. At the start of the assault when the appellant held her hands and placed her on his lap, the complainant made no outcry. She continued in silence while the appellant lifted her from the sofa and carried her to the kitchen.[3] Then, instead of attempting to escape, she willingly laid down near the earthen stove upon being told by the appellant to do so.

Her testimony reads, as follows:

"Q And then he placed you on the floor?

A Yes, sir. He made me lie down.

"Q And you willingly lie down?

A That is correct because he made me lie down."[4]

The complainant did not also make any significant attempt to prevent the appellant from removing her underwear and have sexual intercourse with her, although the appellant was unarmed, or that he threatened the complainant or made threatening gestures. Her declaration in court reads, as follows:

"Q What did you do also?

A I tried to maneuver myself making my side top of the floor and he removed his pants and placed himself on top of me.

"Q After placing himself on top of you, what did he do?

A He exposed his penis.

"Q After exposing his penis, what happened?

A He guided his penis to my vagina.

"Q In effect was Ruperto Tapao able to insert his penis to your vagina?

A It penetrated a little because whenever he exerted effort it is very painful.

"Q When the penis of Ruperto Tapao was inserted to your vagina, what did Ruperto Tapao do?

A He did push and pull movement.

"Q For how long do you think did Ruperto Tapao make push and pull movement?

A It did not take long.

"Q At the time the penis of Ruperto Tapao was inside your vagina, what did he do with your hands, he did anything?

A He held my hands.

"Q Did you like what Ruperto Tapao did to you?

A No, sir.

"Q Why?

A I did not feel (enjoy) the sensation because what he did was ugly thing.

"Q Were you able to shout during that time.

A No, sir?

"Q Why?

A I was not able to shout because he placed handkerchief inside my mouth.

"Q After Ruperto Tapao inserted his penis to your vagina, what did Ruperto Tapao (I will reform the question.)

"Q After Ruperto Tapao had intercourse with you, what did he do?

A He went downstairs and before going he told me that if I ever make noise he will kill me"[5]

Furthermore, Aurea remained silent after she was allegedly abused against her will on April 23, 1974. It was only a week later when she divulged the act to her playmate, Erlinda Antig.

A woman's most precious asset is the purity of her womanhood. She will resist to the last ounce of her strength any attempt to defile it. In the face of superior force or of imminent threat to her life she will succumb and submit. But, once the force or threat is lifted, she will not lose time in seeking justice and retribution.[6] If the assault against Aurea's honor was really true and it was against her will, certainly at the first sign of a lascivious act her impulse would be to cry for help. Her silence and the belated showing against the outrage was not such as could reasonably be expected of a girl who had been forced to submit to a man against her will and places her story in grievous doubt. More so, when we take into account that there were no telltale bruises, scratches or contusions usually attendant to a violent struggle for a woman's honor. While it may be true that the "vaginal canal easily admits 1 finger" and that there are "healed laceration, external orifice of the vagina, 6 o'clock and 1 o'clock",[7] the rupture of the hymen is not a sure index of a sexual experience. A host of other causes than penetration of the vagina by a penis can bring about laceration of the hymen. Masturbation, accidental violence, exaggerated separation of thighs, rigorous and excessive physical exercise and activities are among the other factors that may cause laceration of the hymen independently of the act of sexual intercourse.[8]

It also seems very unnatural that the complainant confided the assault to her honor and person to her playmate, and not to her grandfather, with whom she was living, or to her father, who should be the first to whom such personal matter should be confided because as her own flesh and blood, they would be more concerned and solicitous to her.

Her claim that she did not tell her father or grandfather of the rape because of the threat made after the sexual act is preposterous since it appears that the complainant had told Erlinda Antig of the alleged assault in the very presence and hearing of the appellant, and the appellant did nothing about it, but meekly left the house of Aurea. Her testimony reads, as follows:

"Q Did you tell your father later about what happened to you?

A It was only May 1, 1974, when accused Ruperto Tapao returned to the house and at that time Erlinda was with me in the house. The accused entered and he told Erlinda to go home. I told Erlinda don't go home

because I was raped by him.

"Q What is the name of Erlinda?

A Erlinda Antig.

"Q Why was Erlinda Antig with you that morning of May 1, 1974?

A We were playing.

"Q Was there something Ruperto Tapao did on that day?

A During that day Ruperto Tapao went upstairs. We followed him upstairs, after which we sat on the bench and he also sat on the chair and accused Ruperto Tapao told Erlinda to go home. Upon hearing I told Erlinda not to go home because I was raped by him. After that he commanded Erlinda to gather vegetables (bago).

"Q In effect did Erlinda go out and gather bago?

A She did not because I told Erlinda not to obey his command. He should be the one to gather the vegetable. He is sitting there.

"Q What did Ruperto Tapao do?

A After that, accused Ruperto Tapao sat beside us and then we transferred to the bench and then he followed us and held the hands of Erlinda and placed the hands in front of the penis of the accused Ruperto Tapao and then Erlinda pulled away her hands. After pulling her hands, Erlinda was able to hold the stairs of the house and then Ruperto proceeded home." (Underscoring supplied for emphasis).[9]

Such conduct and behavior in the light of the threat made are contrary to the ordinary course of things and common experience and create in the mind some serious doubt as to the truthfulness and veracity of the complaint. If the appellant had truly threatened the complainant, as alleged, he would have reacted violently instead of merely going home.

At any rate, the alleged threat was not made to intimidate the complainant into having sexual intercourse with the appellant, but was made after the sexual act in order to keep her quiet, so that there is no sufficient evidence to show beyond reasonable doubt that rape had been committed and that the appellant is guilty thereof.

WHEREFORE, the appealed judgment should be, as it is hereby REVERSED and SET ASIDE and another one entered ACQUITTING the appellant Ruperto Tapao of the charge. With costs de oficio.

SO ORDERED.

Barredo, (Chairman), Fernandez,* Abad Santos, and De Castro, JJ., concur.

[1] Original Record, pp. 157-159.

[2] People vs. Ariarte, 60 Phil. 326, 328.

[3] p. 11, t.s.n. of December 6, 1974.

[4] p. 11, t.s.n. of March 5, 1975.

[5] pp. 12-13, t.s.n. of December 6, 1974.

[6] People vs. Optinalia, CA-G.R. 12953-R, August 4, 1955.

[7] Exhibit "C".

[8] People vs. Macaso, CA-G.R. No. 20679-R, June 16, 1959.

[9] pp. 15-16, t.s.n. of December 6, 1974.

* Mr. Justice Ramon C. Fernandez, a member of the First Division, was designated to sit in the Second Division, in lieu of Mr. Justice Ramon C. Aquino, who took no part.

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