

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HENRY GASENDO, ACCUSED-APPELLANT.

G.R. No. L-41052. September 30, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an appeal from the decision of the Court of First Instance of Negros Occidental dated May 5, 1975, convicting Henry Gasendo of the crime of rape; sentencing him to suffer the penalty of reclusion perpetua; and ordering him to indemnify the offended party, Cynthia Aponte, in the amount of P5 ,000.00 as moral damages and to pay the costs.

The statement of facts in the brief filed for the People of the Philippines is as follows:

"In the morning of May 9, 1974, Cynthia Aponte, a 16 year-old girl went with some friends to the Bago river to have a picnic arriving there at 11:00 o'clock in the morning. Thereafter, they went bathing. (pp. 3-4 tsn , Sept. 13, 1974). At about 12:00 o'clock high noon, the group took their lunch at the river bank. After lunch, they continued taking baths. The accused, Henry Gasendo, who arrived after lunch also took a bath. In bathing the accused floated by means of a piece of bamboo called ' gabayan'.

"The offended party took a bath at the shallow portion of the river. At one instance, she drifted to the deep waters. When she was drawn to the deep waters, she took hold of the bamboo ' gabayan' being then used by the accused. When the offended party was holding the bamboo, the accused who was floating on the same, towed the bamboo to the middle of the river. When the accused did this, the offended party told the accused to 'return to the place because I do not know how to swim' but the accused turned a deaf ear to the pleadings of the complainant. Soon, they reached a portion of the river where the complainant could no longer touch the river bed. The complainant pleaded to the accused to bring her back to the shallow place.

"In answer to the pleadings of the complainant, the accused said they will go to the other side of the river to buy guavas. Because the complainant saw that her companions were following them, she shouted to Wilma, one of her companions, to please follow them. Wilma and her companions answered 'Yes, we will follow you.' (pp. 5-6, tsn, Sept. 13, 1974)

"Eventually, the accused and the complainant reached the opposite bank. When they were already in the opposite bank but still on the water, the accused told the complainant the following: 'Just for a moment, I am going to get a nipa fruit which is delicious to eat.' All of a sudden the accused who was behind the complainant held her waist. The complainant shouted for help. At this juncture, the accused held the mouth of the complainant. The complainant tried to shake off the hand of the accused which held her mouth. The accused on the other hand told her to shut up for nobody could hear her.

" In spite of the threats of the accused, the complainant tried to fight the accused by scratching his face at the same time kicking him. To silence the complainant and to stop all her resistance, the accused squeezed her neck, at the same time telling her that he would get one thing from her. (p. 8, tsn , Sept. 13, 1974).

"The accused then kissed the complainant while holding her neck. The complainant on the other hand

continued kicking and scratching the face of the accused. At this juncture, the accused boxed the complainant at the stomach rendering her unconscious.

"When the complainant regained consciousness, she discovered that her panty and shorts were already off and the accused was already on top of her making the motion of push and pull. The penis of the accused was already in her vagina (p. 9, tsn, Sept. 13, 1974) The complainant then pushed the accused. The accused stood up and put on his trousers. When the accused stood up, the complainant felt that her vagina was painful. She examined her vagina and found that there was blood (p. 14, tsn, Sept. 13, 1974). She then put on her panty. On putting her panty, she found that it was torn.

"At the time of the incident, the complainant was wearing a blouse and a bra. The blouse was colored yellow and the bra was colored white. Her panty was colored yellow with a marking of 'Thursday' embroidered on it (p. 11, tsn, Sept. 13, 1974).

"The place where the incident took place could not be seen by anybody as the companions of the complainant were very far from the place. After the incident, the complainant and the accused crossed the river with the same bamboo which they had used in crossing the river where the incident happened because there was no other way to the other side of the river.

"The complainant then went home. She did not tell her parents the incident that happened because the accused warned her that he would kill her if she would tell her parents what happened. The accused further warned her that his brothers are criminals (p. 15, tsn, Sept. 13, 1974).

"She did not also tell her uncle Manuel with whom she was staying because she was afraid that her uncle might get mad and kill somebody.

"In the afternoon of the day when the incident happened, Rosario Gariza went to the house of the complainant. Rosario was surprised to see that the eyes of Cynthia were 'red as if she had just stopped crying.' (p. 8, tsn, Nov. 13, 1974) Rosario also observed that there were scratches and abrasions on the arms and thighs of Cynthia (p. 8, tsn, Nov. 13, 1974).

" Rosario asked Cynthia what happened and Cynthia answered that she was raped by Boy at the river. Cynthia then related to Rosario how she was raped by the accused (p. 8, tsn, Nov. 13, 1974). While Cynthia was narrating her story to Rosario, Cynthia kept on crying and crying (p. 11, tsn, Nov. 31, 1974).

"After Cynthia had related her story, Rosario asked her what she was going to do. Cynthia answered that she wanted to reveal what happened, to her uncle, but she was afraid her uncle might commit something (p. 12, tsn, Nov. 13, 1974).

"Manuel Candia, is the uncle and guardian of the victim Cynthia. He lives in Bago City. Candia works at Bacolod City as an underwriter. (pp. 2-3, tsn, Dec. 18, 1974)

"On May 10, 1974 when Manuel was home at Bago City, he noticed that Cynthia had several abrasions and scratches on her legs and forearm. Candia asked Cynthia what happened. Rosario replied that she 'x x x happened to fall down in the bamboo clumps in front of our house.' (p. 3, tsn, Dec. 18, 1974)

"When Manuel heard this, he just kept quiet.

"On May 11, 1974, Manuel noticed that the appearance of Cynthia had changed. He asked Cynthia why she had 'reduced'. Cynthia answered that she was coughing. Manuel then advised Cynthia to see a doctor at Bago City Medical Center. As advised, Cynthia went to a doctor.

"About 10:00 o'clock in the evening of May 12, 1974, Rosario Gariza told Manuel that Cynthia wanted 'to talk with him outside.'

"Manuel approached Cynthia. When he was face to face with Cynthia, Cynthia covered her face then told him the following:

'This Boy raped me, Boy Gasendo.' (pp. 4-5 tsn , Dec. 18, 1974). Cynthia then cried, so Manuel told her to 'keep your voice low during night, our neighbors might notice you.'

"Later, they went upstairs and dressed. After they were dressed, they proceeded to the Municipal Building. At the Municipal Building, Cynthia recounted how she was raped before a police officer (p. 6, tsn, Dec. 18, 1974).

"On the same day, Dr. Valenzuela conducted a physical examination on Cynthia. Dr. Valenzuela found the following:

"1 . Abrasion at 5:00 o'clock and 9:00 o'clock

2. Lacerations at 3:00 o'clock to 9:00 o'clock

3. Vaginal opening easily admits (1) finger

4. Abrasions, multiple, arm outer aspect, leg right, upper 3rd aspect

5. Abrasions, multiple, anterior aspect leg right

6. Abrasion, multiple anterior aspect, leg, right and lower 3rd anterior aspect, thigh right (Exhibit "D", Medical Certificate)"

On June 21, 1974, Henry Gasendo was charged before the Court of First Instance of Negros Occidental of the crime of rape in a criminal complaint signed by Cynthia Aponte, with the written conformity of her mother, Anita Aponte. The crime charged was allegedly committed as follows:

"That on or about the 9th day of May, 1974, at Bago City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Henry Gasendo, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously have carnal knowledge of the complainant, Cynthia Aponte, 16 years of age, against her will."

Upon arraignment, the accused pleaded not guilty. But as aforesaid, he was convicted and he appealed.

The defendant-appellant makes the following assignment of errors, to wit:

"I

"THE LOWER COURT ERRED IN FINDING THAT THE SEXUAL INTERCOURSE BETWEEN THE ACCUSED-APPELLANT AND THE COMPLAINING WITNESS, CYNTHIA APONTE, WAS COMMITTED BY FORCE AND AGAINST HER WILL AND WITHOUT THE CONSENT OF THE LATTER.

"II

"THE LOWER COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE COMPLAINANT CYNTHIA APONTE AND HER WITNESSES AND IN NOT BELIEVING AND CREDITING THE TESTIMONY OF THE ACCUSED AND HIS WITNESS.

"III

"THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE."

The defendant-appellant admits having had sexual intercourse with complainant Cynthia Aponte in Puntod on

May 9, 1974. He alleges, however, that Cynthia Aponte not only consented to said act but was in fact the one who initiated the same. He, thus, testified:

"Q. Now, what happened when Cynthia clung or rode on your bamboo pole?

A. She invited me to go to Puntod to buy guavas.

Q. Now, you said that you and Cynthia were holding to that bamboo pole and she invited you to go to the other side known as Puntod to buy guavas. Were you able to proceed to Puntod?

A. At first, I refused because I did not bring money with me.

Q. What did Cynthia tell you?

A. Cynthia told me that she would take care of it. She had money.

Q. And so what happened?

A. When she told me that she had money with her, I called our other companions to come along." (p. 9, tsn, Feb. 13, 1975)

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"Q. After you reached that place, what did you do?

A. When we reached Puntod, we were holding hand in hand and then we kissed each other.

Q. Where did you kiss her?

A. On the lips.

Q. You were kissing lips to lips?

A. Yes, sir.

Q. How long did you have that lips to lips kiss?

A. About forty (40) seconds.

Q. How many times did you kiss her?

A. Three (3) times.

BY THE COURT:

"Q. That three times, forty seconds each?

A. No, sir.

BY ATTY. GARBANZOS:

"Q. So the time of your kissing varies?

A. Yes, sir.

Q. While you were kissing her, what else were you doing?

A. She told me to undress myself.

BY THE COURT:

"Q. The woman was the one who told you to undress yourself?

A. Yes, sir.

BY ATTY. GARBANZOS:

"Q. What did you do or answer?

A. I said, 'Wait for a little while.'

BY THE COURT:

"Q. So it was the woman who became aggressive?

A. Yes, somewhat aggressive.

Q. And you became a little bit shy?

A. Yes, sir.

Q. Do you want the Court to believe your story that Cynthia was the one who became aggressive and you became shy in her invitation?

A. Because before we embraced each other, she kissed me here.

Q. That is not the question of the Court. Answer the question of the Court.

A. Yes, sir.

COURT:

"Proceed.

BY ATTY. GARBANZOS:

"Q. While Cynthia was undressing, what were you doing?

A. When Cynthia was taking off her dress, I also was undressing myself.

Q. So you were undressing almost together?

A. She was ahead of me in taking off her dress.

BY THE COURT:

"Q. Do you want to inform the Court that when she undressed, she was fully naked?

A. Yes, sir.

Q. And you also undressed yourself fully naked?

A. Yes, sir.

Q. Do you want the Court to believe that in that moment Cynthia was barely naked and nude?

A. Yes, sir.

COURT:

"Proceed.

BY ATTY. GARBANZOS:

"Q. Now, after you had undressed, and Cynthia had also undressed, according to you, what happened?

A. She took her dress and my clothes and made them as mat and we lied there.

BY THE COURT:

"Q. Do you want the Court to believe that she was the one who even arranged the ground where you would lie down?

A. Yes, sir.

Q. And both of you were naked at that time?

A. Yes, sir.

COURT:

"Proceed.

BY ATTY. GARBANZOS:

"Q. In that place where you were both naked, according to you, your clothes were used as mat, is that place isolated?

A. You can be seen, if you stand up. If you lie down, you cannot be seen.

Q. Now, after you and Cynthia were lying down on that provisional mat, what did you do?

A. We cohabited.

Q. When you cohabited with each other, did Cynthia put up any resistance or object?

A. No, she even held my hand and embraced me.

Q. Can you describe to the Honorable Court how Cynthia Aponte was holding you while you were in the act of cohabitation?

A. Yes, sir.

(pp. 12-15, tsn, Feb. 13, 1975)

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"Q. Will you please tell us?

A. While I was on top of Cynthia, she was embracing me. She said, 'Go ahead. Let it enter now.' She was holding my penis. (Italics supplied).

Q. How about you, were you also holding her private part?

A. No, sir.

Q. How about your hands, what were you doing while you were copulating?

A. I embraced her and kissed her.

Q. With both hands?

A. Yes, sir.

Q. Now, during that five-minute period when you were copulating with each other, according to you, had you

observed or noticed any sound coming from Cynthia?

A. Cynthia told me. 'Go ahead. Make it fast and we will go.'

Q. After that five minutes which is the period of your copulation, what did you do?

A. I stood up.

Q. How about Cynthia?

A. Cynthia was still lying down. When I stood up and Cynthia was still lying down, Cynthia held my hand and pulled me down for the purpose of another round. (p. 16, tsn, Feb. 13, 1975)"

The trial court did not give credence to the foregoing testimony of the accused-appellant. And rightly so. For it is so unnatural for a 16-year old girl to have acted the way the complainant had allegedly acted, namely: persuading the appellant to separate from their group to go to Puntod to be able to have sexual intercourse; and after consummating the act, pulling down the appellant "for the purpose of another round." Besides, other than the foregoing self-serving testimony of the appellant, no evidence whatsoever was presented to prove that the appellant was extra-ordinarily irresistible and/or that the complainant is a nymphet capable of the aggressive attribute imputed to her. Finally, all such allegations of consent are belied by the fact that the complainant had suffered injuries not only in her arms, thighs and legs, but also in her private parts. Aside from the complainant herself, three other witnesses attested to the fact that she did suffer various injuries, namely: (1) Rosario Gariza, a neighbor who testified that in the afternoon of May 9, 1974, she saw abrasions in the arms, thighs and legs of the complainant and contusions in one of her arms (t.s.n., Gariza, November 13, 1974, p. 8); (2) Manuel Candia, the uncle of the complainant, who testified that he saw several scratches on the legs and forearms of the complainant when he arrived from work on May 9, 1974, and that on the next day, he noticed the scratches in the body of his niece (t.s.n., Candia, December 18, 1974, p. 3); and (3) Dr. Felix Valenzuela, the City Health Officer of Bago City who testified that he conducted an examination of the complainant on May 12, 1974, and found the following: 1. abrasion at 5 and 9 o'clock in the vaginal valve; 2. lesions at 3 and 9 o'clock also in the vaginal valve; 3. vaginal opening easily admits one finger; 4. multiple abrasions in the right arm, outer aspect; 5. multiple abrasions in the right leg, anterior aspect; and 6. multiple abrasions in the right thigh, anterior, aspect. (t.s.n ., Valenzuela, October 21, 1974, pp. 86-88). All such evidence disprove the appellant's claim of consent and prove beyond reasonable doubt that the admitted sexual penetration was committed by him through force and intimidation.

We need not discuss extensively the second assignment of error which questions the trial court's findings and conclusions concerning the credibility of the witnesses. For settled is the rule that the findings and conclusions of trial courts concerning the credibility of witnesses are entitled to great respect by the appellate courts since it is the former courts who actually hear the witnesses and observe their deportment and manner of testifying during the trial. Besides, the appellant was not able to point to any important fact or circumstance which the trial court had overlooked and which could materially alter the outcome of the case.

Sexual intercourse with the complainant was admitted by the appellant. Since the same was proven beyond reasonable doubt to have been committed by means of force and intimidation, the trial court did not err in convicting the appellant of the crime of rape.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** in toto with costs against the appellant.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ.,concur.

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