

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN EVANGELISTA Y CARDIÑO, DEFENDANT-APPELLANT.

G.R. No. L-45089. April 27, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the judgment of conviction for the crime of forcible abduction with rape of appellant Juan Evangelista y Cardíño rendered by Judge Francisco de la Rosa (May his soul rest in peace!) on August 19, 1976 and the consequent sentence therein imposed upon appellant as follows:

"WHEREFORE, in view of all the foregoing, this Court finds accused JUAN EVANGELISTA y CARDIÑO guilty beyond reasonable doubt of the complex crime of FORCIBLE ABDUCTION WITH RAPE, as charged in the Complaint of October 15, 1975, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, to pay Anita Yunsay the amount of P10 ,000.00 as moral damages, and to pay the costs."

What immediately impresses Us in this case is that the People has not filed any brief to answer the rather extended printed one of appellant. Instead, thru then Assistant Solicitor General Vicente V. Mendoza, now a Justice of the Court of Appeals, and Assistant Solicitor General Nathanael P. de Pano, Jr. and Trial Attorney in the Office of the Solicitor General Blesila O. Quintillan, the prosecution has filed merely a manifestation wherein it vigorously points out that "the accused has not been proven guilty of crime charged beyond reasonable doubt. There is no adequate evidence to show that the accused Juan Evangelista, is the person who had committed the crime charged."

"It is, therefore, recommended", prays the People, "that the judgment of the lower court be reversed and the accused herein acquitted of the crime charged."

To abbreviate what could otherwise be an extended disquisition, this attitude of the prosecution has been brought about by the following turn of events related in the People's manifestation thus:

"Juan Evangelista was charged with the complex crime of forcible abduction with rape on the complaint of the minor, Anita Yunsay, assisted by her mother, Purification Yunsay. Before his arraignment, or on November 4, 1975, the accused filed a motion to quash the complaint or to return the case to the City Fiscal for the necessary and appropriate preliminary investigation, in accordance with law, on the grounds set forth therein. The motion was not opposed by the prosecution, represented by Fiscal Ragasa. Nonetheless, the trial court denied the accused's motion and ordered the trial of the case.

"The accused was arraigned on November 14, 1955, and he pleaded "not guilty" to the charge. The case was then set for hearing on January 6, 1976.

"At the initial hearing of this case on January 6, 1976, the counsel for the accused presented an affidavit of desistance, entitled " Sinumpaang Salaysay ng Paguuring' executed by the complaining witness Anita Yunsay, with the assistance of her mother. (Exhibit 1) In her affidavit, subscribed and sworn to before the trial fiscal, Assistant City Fiscal Angel Ragasa, Anita Yunsay repudiated previous statements executed by her in the police

precinct. Anita Yunsay stated that she had made a mistake in identifying the accused as the person who raped her. Fiscal Ragasa confirmed the execution of this document in open court.

"However, despite the complainant's affidavit of desistance presented by the accused, the trial court proceeded with the trial of the case. The prosecution, therefore, called Anita Yunsay and her mother, Purificacion Yunsay, to the witness stand. They both affirmed the contents of their affidavit of desistance in open court. (Exhibit 1)

"After due trial or on August 19, 1976, the trial court rendered a decision holding the accused, Juan Evangelista, guilty of the crime charged beyond reasonable doubt. The dispositive portion of the decision reads:

'WHEREFORE, in view of all the foregoing, this Court finds accused JUAN EVANGELISTA y CARDIÑO guilty beyond reasonable doubt of the complex crime of FORCIBLE ABDUCTION WITH RAPE, as charged in the Complaint of October 15, 1975, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, to pay Anita Yunsay the amount of P10 ,000.00 as moral damages, and to pay the costs.'

'SO ORDERED.'

"Hence, this appeal." (Pp. 117-118, Record.)

Our problem, therefore, is to determine whether in law and in conscience, it is proper for Us to acquit appellant, as insisted upon by the prosecution itself, upon the premise that, assuming that original complainant Anita Yunsay, who was twelve years and five months old, had actually been forcibly abducted on October 1, 1975, it was not, according to her own affidavit of desistance, concurred in by her mother, Purificacion Yunsay, herein appellant Juan Evangelista y Cardíño who committed the same, considering importantly, that the said " Sinumpaang Salaysay ng Paguurong" was stoutly reaffirmed and ratified by both, the said complainant and her mother, in open court, in the face of unveiled threats of His Honor to have them investigated and prosecuted for perjury, and considering further that at the trial no direct oral evidence whatsoever was presented proving the circumstances of the offense charged, not to mention the fact that, to be sure, to Our mind, the original affidavit which started this prosecution, bears some elements of improbability.

We have carefully and scrupulously reviewed the evidence of the prosecution adduced at the trial at the behest of the learned trial judge, who deserves commendation (even posthumously) for his unrelenting tenacity to ferret out the truth as to the identity of Anita's supposed attacker rather than rely on what appeared to him suspicious non-factual turnabout in the attitude of said complainant and her mother, and upon due consideration and study thereof, We are morally satisfied that it is better for Us, that in line with constitutional tradition, We give the appellant herein the benefit of the doubt.

This is not to say that His Honor had no grounds at all to feel repulsive about the affidavit of desistance. Having before him the original affidavit of Anita and the record of the preliminary investigation by the fiscal, which said fiscal assured the court was in order and the identification by Anita of her alleged assailant positive and definite, including the testimony of Patrolman Gaudencio Cordura, Jr., who conducted the police inquiry, We cannot blame His Honor for his doubts. He made no secret of his suspicion that complainant's mother, Purificacion, might have unduly influenced her daughter to desist on pursuing the case. But much as the Court wishes His Honor had been successful in his well intentioned quest to see that real justice prevailed, it is Our considered view that in the state of the record of this case, to sustain the judgment of conviction presently under appeal might actually result in injustice -- the judicial imputation of a grave offense to an innocent man. Trite to reiterate the oft repeated criterion in criminal justice, it is better to commit the mistake of acquitting a thousand men who are indeed guilty than convicting one who is innocent.

In their manifestation, the prosecutors underscore relevant facts and circumstances as follows:

"On October 6, 1975, Anita Yunsay and her mother Purificacion Yunsay went to the Metropolitan Police Force, Pasay City and reported that a certain 'Tony Bautista' forcibly abducted and raped her in the evening of October 1, 1975. She said that the vehicle used in abducting her was a yellow 'Harabas' pick up truck with the phrase 'Bagong Lipunan' painted on its left side. The case was referred to Patrolman Cordura Jr. for investigation. (pp. 9-10, t.s.n., February 11, 1976)

"On October 14, 1975, at about 10:00 o'clock in the evening, the accused Juan Evangelista, the barrio captain of San Isidro, Makati, Rizal, was apprehended by Patrolman Cordura, Jr. with two other policemen, while he was inside a restaurant in Makati for 'having been found in possession of a firearm'. He was taken to the Pasay City Police Headquarters for questioning. When they arrived at the precinct, Anita Yunsay, her mother Purificacion Yunsay, her brother, sister and a cousin named Tony Quisumbing were there. (pp. 16-17, t.s.n., February 11, 1976)

"Juan Evangelista informed the police that he had a license and permit to carry a firearm inasmuch as he was a Barrio Captain. However, instead of investigating the accused in connection with the firearm for which he was arrested, he was shown to Anita Yunsay at the instance of Patrolman Cordura, Jr. (p. 16, t.s.n., February 11, 1976) Patrolman Cordura, Jr. then asked Anita Yunsay whether she knew the person shown to her. The complainant was hesitant to answer the question at first. In fact she said 'Hindi po': (Exhibit 'B' and 'B-1') Subsequently, however, she pointed to the accused and identified him, as the person who had abducted and abused her. The accused vehemently denied the charge and executed a sworn statement to this effect. (Exhibit '2') (pp. 3-4, t.s.n., February 26, 1976).

"On December 25, 1975, the complainant Anita Yunsay and her mother executed an affidavit of desistance or a 'Sinumpaang Salaysay ng Pag-uurong' (Exhibit '1'). In said affidavit the complainant stated under oath that she had made a mistake in pointing to the accused Juan Evangelista as her abductor; that when she saw the accused Juan Evangelista in the investigation room of the police headquarters, it was only her impression that the accused was the culprit because he resembled, in face, the person who had sexually assaulted her; that after closely and carefully scrutinizing the person of the accused, she finally realized that 'he is not the one who did it to me', because Juan Evangelista was hairy, stocky, and a little bit older than the person who had abducted her; that the latter 'is a bit taller, medium built with long straight hair and younger than the accused.' (Exhibit '1')

"On the insistence of the trial judge, the minor Anita Yunsay, and her mother, were placed on the witness stand by the prosecution fiscal. In her testimony, Anita Yunsay reiterated the contents of her affidavit, and under rigid cross examination by the trial court, affirmed that she had made a mistake in identifying the accused as the person who assaulted her. (pp. 2-11, t.s.n., January 12, 1976).

"DISCUSSION

"From the above-mentioned facts, it can be seen that the issue is whether or not the accused, Juan Evangelista, had been sufficiently identified and the crime with which he is charged proven beyond reasonable doubt.

"It is respectfully submitted that the answer is in the negative, for the reason that Juan Evangelista has not been properly and positively identified as the malefactor in this case.

"The prosecution's case against the accused rests solely on the sworn statement executed by the minor Anita Yunsay when she was in the police precinct (Exhibit 'B' and 'B-1'). However, this sworn statement was expressly repudiated by Anita Yunsay when she testified in open court. It is the rule that a sworn statement is mere hearsay evidence, unless the affiant is presented in court to confirm the same, and an opportunity to cross-examine the affiant is afforded to the adverse party. Corollarily, if the affiant expressly repudiates her sworn statement, then the said sworn statement has no probative value and is inadmissible in evidence.

'An affidavit is within the hearsay rule, the same as unsworn instrument. (Patterson vs. Maryland Ins. Co., 3 Harr & J (MD) 71). At a trial the adverse party has the right to be confronted by the witnesses against him, if possible and is entitled to the general protection of the rule excluding hearsay evidence. Consequently affidavits are not, as a rule, admissible as independent evidence to establish facts material to the issues being tried. (McIver vs. Kyger, 3 Wheat (US) 534 L ed 332) Nor are they admissible as prima facie evidence of the facts they contain, for to admit them for this purpose would be equally objectionable, since the burden of going forward with the proof would thereby be cast upon the adverse party, but if the affidavit was contradicted, it might establish 'no cause of action'. (Smith vs. State, 147 GA 668, 95 SE 281, 15 ALR 490).'

"Anita Yunsay was thoroughly questioned by the trial judge and despite his threats of contempt, she was unshaken in her testimony that she had made a mistake in her sworn statement in her identifying the accused as the offender in this case. There is nothing on record to show that Anita Yunsay had any other motive for repudiating her earlier sworn statement, other than her desire to abide by the dictates of her conscience.

"It may be noted that the crimes in question are among those enumerated in Article 344 of the Revised Penal Code, which crimes cannot be prosecuted de oficio. In other words, the crimes of abduction and rape are in the nature of private offenses, inasmuch as the law has reposed 'the right to institute such proceedings exclusively and successively in the offended person, her parents, grandparents or guardian' (U.S. v. de la Santa, 9 Phil. 22). This provision of law which requires that the proceedings be initiated upon complaint filed by the offended party and her relatives was enacted 'out of consideration for the offended party and her family who might prefer to suffer the outrage in silence rather than go through with the scandal of a public trial,' (Samilin v. CFI of Pangasinan, 57 Phil. 298; also cited in Valdepiñas v. People, 16 SCRA 871). Accordingly, if after filing the complaint the offended party in the case at bar decided that she was unable to face the scandal of a public trial, or, if for some private reason she preferred to suffer the outrage in silence, then, corollary to her right to institute the proceedings, she should have been allowed to withdraw her complaint and desist from prosecuting the case.

"The affidavit of desistance, and its affirmance in open court by Anita Yunsay should, therefore, have been considered as made in accordance with the spirit of the law and, thus, allowed by the trial court.

"Anita Yunsay's sworn statement is insufficient to convict for the further reason that the circumstances surrounding its execution render this sworn statement unreliable and unconvincing. Firstly, the presence of the accused Juan Evangelista at the precinct on October 14, 1975 was not brought about by the complaint of Anita Yunsay. The accused was in the precinct on that day because he had been wrongfully suspected of illegal possession of firearm (which had nothing to do with Anita Yunsay's case). The circumstance that he was brought before Anita Yunsay for identification on that particular occasion was therefore sheer coincidence--not a result of a police investigation of Yunsay's case.

"Secondly, the manner in which Anita Yunsay identified the accused was irregular and improper. The accused was not pointed to in a line-up by the complaining witness. Such identification is of doubtful reliability.

"Thus, in one case, the Supreme Court held that the identification of the accused was unreliable if after the accused was picked-up by the police, he was made to walk and turn around in the presence of identifying witnesses instead of being placed in a line-up which, is the standard verification procedure to test the witness' memory, and to afford a mere suspect a fair chance of early relief from the inconvenience inflicted on one who is mistakenly identified (People v. Cruz, 32 SCRA 181). Moreover, the accused was pointed to the identifying witness as the person suspected by the police as the perpetrator of the crime in question. The hesitation of Anita Yunsay in identifying the accused is also a matter of record. (pp. 3-4, t.s.n ., February 26, 1976).

"Lastly, the accused was able to establish a credible and convincing alibi, supported by the entries in the police blotter (Exhibits '5', '5-A' to '5-D') and corroborated by four disinterested witnesses showing that from 9:30 p.m. to past 11:00 p.m. in the evening of October 1, 1975, the accused was in Police Precinct 4, Makati Police

Department, helping in the settlement of a physical injuries case. This alibi was never refuted by the prosecution. As a rule, when the accused's identification is weak and unreliable, the defense of alibi assumes importance and may be given credence. (People v. Basuel 47 SCRA 207).

"Considering the foregoing circumstances, the uncorroborated sworn statement of Anita Yunsay cannot possibly be considered as sufficient evidence to prove the guilt of the accused beyond reasonable doubt. It must be noted that Anita Yunsay is the only witness who could have identified the culprit in this case. Upon the prosecution rested the burden of establishing the identity of the accused. The guilt and identity of the accused herein has not been established beyond reasonable doubt." (Pp. 3-9, Manifestation dated March 21, 1978.)

The foregoing considerations presented by no less than the prosecution may not be altogether unassailable and irrefutable. We are of the opinion, however, and so hold, that they are sufficiently persuasive in the light of the peculiar circumstances of this case. We, therefore, accept them as adequate predicates for their prayer of absolution of appellant. Neither the arguments of His Honor nor the evidence on record can stand in the way of this conclusion.

WHEREFORE, the judgment of the trial court herein on appeal is hereby reversed, on grounds of reasonable doubt, and appellant Juan Evangelista y Cardíño is hereby acquitted of the crime he stands charged of, with costs de oficio.

Aquino, De Castro, Ericta, and Escolin, JJ., concur.
Concepcion, Jr., and Abad Santos, JJ., on leave.

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