

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REYNALDO SANTOS, ALIAS "KIRKIR",
DEFENDANT-APPELLANT.**

G.R. No. L-38512. November 16, 1979

Ponente: ANTONIO, J.

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ANTONIO, J.:

Automatic review of the decision of the Court of First Instance of Tarlac, Branch IV, in Criminal Case No. 598, finding Reynaldo Santos, alias "Kirkir" guilty of the crime of rape and imposing upon him the supreme penalty of death, with costs.

The evidence for the prosecution show that at about 2:00 o'clock in the early morning of July 22, 1973, Ernesto Garcia and his children, Myrna, Pablo, Pedro, Violeta and Lourdes, were sleeping in their house at Barrio Nagserialan, Camiling, Tarlac, while his wife, Adelaida Banigued, was still awake weaving a mat. Suddenly shouts for help coming from the neighboring house of the spouses Dominador Dancel and Basilia Dancel awakened them. Responding to the pleas for succor, the Garcias ran out of their house.

The offended party, Myrna Garcia, a young girl almost fifteen (15) years of age when the incident happened, testified that when she was awakened by the shouts for help, she ran out of the house and saw her mother, Adelaida Banigued already in their yard, being hacked with a bolo (Exhibit "A") by the appellant. She recognized appellant because it was a moonlit night. Upon seeing Myrna, appellant, with the bolo still in his hands, ran after Myrna, her sister Violeta Garcia and Virgilio David, an adopted child of the Dancels. In the course of the pursuit Myrna stumbled and was overtaken by appellant in the muddy rice paddies north of their house. Appellant then straddled her and threatened her, with the bolo pressed against her neck, that he would kill her unless she acceded to his carnal desires. As she struggled, she felt the pressure of the blade of the bolo on her neck and became frightened. In such a situation, appellant, in spite of the screams of the offended party, was able to consummate his carnal desires.

Upon being awakened by the outcries for help, Ernesto Garcia, Myrna's father, immediately ran towards the house of Barrio Captain Julio Gabriel and Barrio Councilman Felix Corsino for their assistance. The Barrio Captain, the Barrio Councilman and two other residents of the same barrio accompanied Ernesto to the yard where he had left his wife and children. They found the yard already deserted. While searching the adjacent ricefields with flash-lights, they heard someone calling: "Tatang, tatang", and upon running to the place where the voice came from, they saw appellant on top of his daughter Myrna, and his pants were down and his buttocks exposed. Upon seeing the plight of his daughter, Ernesto Garcia tried to grab the bolo near the head of Myrna but the Barrio Captain took hold of his hand and pacified him. The Barrio Captain took appellant to his (Barrio Captain's) house, and from there appellant was brought to town for investigation.

Julio Gabriel, the Barrio Captain of Nagserialan, Camiling, Tarlac, corroborated Ernesto Garcia's testimony. He testified that at early dawn of July 22, 1973, Ernesto Garcia woke him up at his house, asking for help. In

response to the call, he went with him to the scene of the incident, accompanied by Barrio Councilman Felix Corsino, Artemio Limon and Santiago Domingo. Upon arrival thereat, they found the place deserted but when they searched the adjacent ricefields they heard somebody screaming, "Tatang, tatang". Proceeding to the place where the voice was coming from, they found appellant still on top of Myrna, with his trousers pulled down below his knees. Myrna was then screaming. Ernesto Garcia, who was enraged at what he saw, attempted to grab the bolo which was near Myrna's head, but he (Julio Gabriel) took hold of Ernesto's hand and pacified him. Myrna told him that she ran away, pursued by the appellant, and when she was overtaken, she was forced, due to fear, to submit to his carnal desires. He ordered appellant to stand up and later brought him to town and turned him over to the policeman on duty that early dawn at the municipal building. The bolo was likewise turned over to the police (Exhibit "A"). As a result of this incident, four (4) criminal cases were filed against appellant namely, two cases of Frustrated Homicide (Criminal Cases Nos. 595 and 596), Trespass to Dwelling (Criminal Case No. 597), and Rape (Criminal Case No. 598). This case refers only to the case of rape.

Appellant admits in this case that he had carnal knowledge of the offended party on the date and time in question. His defense, however, is that the offended party submitted to the sexual intercourse voluntarily. He claims that his uncle, Dominador Dancel, had told him to go to his house "to take advantage of the womanhood" of Myrna, and that he (his uncle) would kill him if he would not do it. In compliance with his uncle's order, he proceeded to the house of Dominador Dancel at about 1:00 o'clock in the early morning of July 22, 1973. Upon finding the door open, he entered to find out if anybody was sleeping there. He saw someone, whose face was covered by a blanket, sleeping on the floor, and when he removed the blanket he noticed that it was his aunt, Basilia Dancel. Upon recognizing him, his aunt berated and kicked him until he fell on the floor. His aunt then stood up and got a bolo but he was able to wrest the weapon from her possession. While Basilia was shouting, he went out of the house and upon seeing Myrna in the yard, he held her hands and told her "come". They then proceeded toward the fields. About two hundred meters from the house of his aunt, Myrna inquired: "Why, Manong", and he in turn asked her if she liked him and upon answering him "Yes, Manong", they lay down: Myrna then removed her panties and they had sexual intercourse. It was while they were committing the act that the Barrio Captain and his companions arrived. When he was questioned by the Barrio Captain why he did it, he replied that it was not his voluntary wish but the order of his uncle Doming.

Since the fact of sexual intercourse is not disputed by appellant, the only issue for resolution in this appeal is whether or not the appellant employed force or intimidation upon the victim.

It is argued by appellant that the offended party's claim of intimidation and duress was based mainly on the latter's testimony, without any corroborating witnesses; that it is replete with contradictions and inconsistencies; and that the lower court erred in concluding that he employed force or intimidation.

Crimes against chastity by their very nature usually involve only two persons - the complainant and the offender. Seldom, if ever, is there an eye-witness to the commission of the offense. As a consequence, conviction or acquittal of the accused depends almost entirely on the credibility of the complainant's testimony. It is, therefore, for a good reason that courts examine with greatest care the complainant's story and subject it to a thorough scrutiny to determine its veracity in the light of human nature and experience.[1] It has been held that when a woman testifies that she has been raped, she says in effect all that is necessary to show that rape has been committed. If the testimony is not improbable, the defendant may be convicted on the basis of such uncorroborated testimony.[2] Here, the testimony of the offended party is not only corroborated by the testimony of Ernesto Garcia but also by the Barrio Captain. Both attested that Myrna was screaming for help.

Appellant contends that there are serious contradictions and inconsistencies in the testimonies of Myrna and her witnesses which should have precluded the court from giving credence to their testimonies. Thus, he points out

that Myrna Garcia testified that she did not scream because she was threatened by the appellant that if she screamed for help she would be killed, while her father, Ernesto Garcia, claimed that he heard Myrna shout "Tatang, tatang", and Julio Gabriel, another witness for the prosecution, heard "a voice calling for help" and saw her screaming.

We do not find any inconsistency between the testimony of Myrna and the claims of Ernesto Garcia and Julio Gabriel. Myrna's statement that she did not scream refers to the time before the appellant had sexual intercourse with her, whereas the testimonies of Ernesto Garcia and Julio Gabriel refer to a time when appellant was already sexually abusing Myrna.

Myrna's testimony on this matter is as follows:

"Q. And that was the time before he committed the sexual intercourse with you?

A. Yes, sir.

COURT

Q. Why did you not shout or run away?

A. Because he told me that once I will scream for help, he will kill me, sir," (t.s.n., p. 35, Hearing on November 5, 1973)

Upon the other hand, Ernesto Garcia and Julio Gabriel's statements are:

(a) Ernesto Garcia:

"Q. Because you did not reach (sic) anybody, what did you do?

A. Because we did not reach (sic) anybody, we tried to search thru lights, then by and by, we heard somebody calling, 'Tatang, tatang' sir.

Q. And upon hearing those shouts for help, what did you do?

A. We went to search the place where that voice came from, sir." (t.s.n., p. 75, *ibid.*)

(b) Julio Gabriel:

"Q. Because you did not find somebody in those houses where you went, what did you do?

A. When I was searching that place in using my flashlight, suddenly I heard a voice calling for help, sir." (t.s.n., p. 10, Hearing on November 8, 1973)

Appellant also places much stress on the circumstance that at the time of the incident and/or just after it, when Myrna was asked by her father why she was in that place, she only answered: "She put it" (Inkabil na) and did not say right away that she was chased and brought to the fields by appellant. Appellant argues that her failure to relate to her father the sordid details of what happened to her could only mean that her intercourse with appellant was with her consent.

As correctly observed by the Solicitor General Myrna's failure to disclose to her father the details of her defoliation should be viewed in the light of the mental shock and trauma that must have overwhelmed her. Consider her harrowing experience: she was a girl of tender age, suddenly awakened from deep slumber by Basilia's agonizing cries for *suc-cor*; she underwent, in rapid sequence, the shocking experience of seeing her mother being hacked and *boload* by appellant, and being sexually abused by force by the same armed assailant. Under such circumstances, how could she be expected to have sufficient equanimity to recall and relate to her

father immediately all the details of her harrowing experience?

Appellant further contends that the claim of Myrna that she "stumbled" and was "overtaken" by appellant was revealed only on November 5, 1973, when she testified in court, or over three (3) months after the incident. This is not true. The records show that on July 22, 1973, Myrna gave a statement before the Municipal Court of Camiling, Tarlac, when the first stage of the preliminary investigation was conducted, narrating how she was raped by appellant. It must be noted that Myrna filed the complaint for rape against appellant with the Municipal Court of Camiling immediately the following day, July 23, 1973. Said statement is similar to her testimony in court on November 5, 1973.

In seeking to disprove the victim's allegation that she has had no previous sexual experience, appellant points to the medical certificate (Exhibit "C") which shows that immediately after the incident her hymen had "old healed lacerations" and her organ could admit "one and two fingers with ease". As an intact hymen does not of itself always and unequivocally signal virginity, an absent hymen does not always point to sexual intercourse.[3] Besides, as correctly found by the trial court, the presence of bloodstains (Exhibits "B-1" and "B-2") on the dress shows that this was Myrna's first sexual experience.

Even if we were to assume that Myrna was no longer a virgin on July 22, 1973, this does not necessarily mean that the crime of rape could not have been committed. Virginity of the offended party is not an essential element in the crime of rape. The fact that the offended party may have been of an unchaste character constitutes no defense in a charge of rape, provided that the sexual act was committed with force and violence.[4] In any event there are sufficient data in the medical and police findings to corroborate the testimony of the offended party that she was forcibly sexually abused -- thus, the presence "of abrasion at the left iliac region" and of "leaves of grass" at the "vaginal canal" and in the pubic hair (Exhibit "C"). Aside from the foregoing, her dress was stained with blood and partly covered with mud.

Further, appellant claims that the testimony of Myrna that the bolo was continuously pressed against her neck is contradicted by the testimony of her own father who stated that when he saw appellant on top of Myrna, he noticed a bolo on the lateral side of Myrna's head, stuck on the ground, in a slanting position.

We do not find any inconsistency between Myrna's and her father's statements. Myrna's testimony, that the bolo was continuously pressed against her neck referred to the time when appellant threatened her before the intercourse. Her testimony reads as follows:

"Q. According to you, before the accused committed intercourse with you, he was holding your neck and shoulder, is that right?

A. Yes, sir,

Q. He was holding your shoulder by what arm?

A. The right hand, sir.

Q. How about your neck, what arm?

A. He is only holding my neck and shoulder with one hand, sir.

Q. So not at the same time?

A. No, sir.

COURT

Q. How was that done, will you try to demonstrate now - the interpreter as the specimen. Do not be ashamed.

A. The witness demonstrating by placing the bolo at the Adam's apple and at the same time, his four (4) fingers has been extended to the shoulder of the subject specimen.

ATTY. LLOBRERA.

Q. Your hands at that time are free, is that right?

A. Yes, sir.

Q. And also your body, you could move your body if you want to?

A. Yes, sir.

Q. And how about the left hand of the accused, what was it doing at that time?

A. The right hand of the accused Reynaldo Santos was holding my shoulder and neck and the left hand was holding my private part, sir.

Q. And that was the time before he committed the sexual intercourse with you?

A. Yes, sir.

COURT

Q. Why did you not shout or run away?

A. Because he told me that once I will scream for help, he will kill me, sir.

Q. But he was not holding a bolo at that time?

A. He was pulling the bolo that time and it was at that time when he placed the bolo into my neck, sir.

Q. How could he then holding this bolo when he was pressing your neck and the left hand was holding your private parts?

A. After holding my neck and shoulder, it was at that time he laid down the bolo on my neck and pressed it, sir.

Q. In other words, when he was pressing your neck and shoulder the bolo was there at the same time?

A. Yes, sir.

Q. How did he hold the bolo, you try to demonstrate again, making the gavel as the bolo. You make this clear to the Court, because the Court is confused?

A. The witness is demonstrating that the supposed bolo is being held across the neck while pressing the shoulder.

ATTY. LLOBRERA

Q. And was there any occasion for him to drop the bolo?

A. None, sir." (t.s.n., pp. 33-37, Hearing on Nov. 5, 1973. Italics supplied.)

Her father's testimony has reference to the time when appellant was already in the final stage of the sexual act.

Another alleged inconsistency pointed out by appellant is the fact that Myrna testified that her hands were free while her father said that appellant held Myrna's hands while he was on top of her.

Again, Myrna was here referring to the time before appellant had intercourse with her, while her father's statement refers to the time when they arrived at the place and found appellant was already consummating the sexual act.

Appellant further argues that since Myrna's hands were free at that time she could have readily extricated herself from appellant, if not avoided the intercourse, and her failure to do so could only mean that she cooperated with the appellant in the act or consented thereto. Such speculations fail to consider the fact that appellant was physically superior in strength to the complainant. It must be remembered that after appellant had placed the bolo at Myrna's throat and threatened to kill her, the girl was already in a state of fear. Under such circumstances, the fact that although the hands of the victim of rape were free, appellant was still able to consummate the sexual act does not necessarily imply that she consented to the act if, as shown in the case at bar, the offended party had to submit to appellant's carnal desires due to fear.[5]

Appellant, in denying that he used a bolo to intimidate Myrna, asserted that he left the bolo, which he wrested from Basilia Dancel, some four feet away from where he had sexual intercourse with Myrna. This claim is belied by the fact that both Barrio Captain Gabriel and Ernesto Garcia positively declared that they saw the bolo near the head of Myrna when they saw appellant on top of the victim on the rice paddies.

The version of appellant that this young girl of 15 years, whom he knew only casually would readily yield to his carnal desires, after seeing him attack and bolo her mother, appears highly incredible. It is an imposition on human credulity. It is not in accord with the natural promptings and instincts of human nature. Indeed, the natural reaction of a daughter upon seeing her beloved mother attacked would be a feeling of revulsion against the attacker.

Evidence, to be believed, must not only proceed from the mouth of a credible witness but it must be credible in itself, such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of juridical cognizance.[6]

When the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[7] We find no important fact or circumstance which detracts from these findings of the court a quo.

We hold, however, that the lower court erred in appreciating nocturnity and uninhabited place as aggravating circumstances in this case.

In default of any showing or evidence that the peculiar advantages of nighttime were purposely and deliberately sought by the accused, the fact that the offense was committed at night will not suffice to sustain nocturnidad. It must concur with the interest or design of the offender to capitalize on the intrinsic impunity afforded by the darkness of night.[8] Admittedly, the time and date of the incident in question was a moonlit night. It cannot be said, therefore, that, appellant chose or took advantage of the darkness to conceal his act. It is to be noted, too, that appellant ran after the victim only when he saw her as he went out of the house of Basilia Dancel. Obviously, their meeting was merely accidental.

The circumstance of uninhabited place should not have been appreciated because aside from the failure to show that the isolation of the place was purposely sought by appellant to enable the attainment of his objective without interference or to secure himself against recognition and punishment,[9] the place of the commission of the crime

could be seen or the voice of the victim could be heard from a nearby house.[10] Since the prosecution witnesses, Ernesto Garcia and Barrio Captain Gabriel, while at a place 300 to 400 meters away from the former's house heard the victim's call for help, said circumstance cannot be appreciated in the imposition of the penalty. Moreover, it will be recalled that the rice paddies where the inter-course took place was the very spot where the victim, who was running away, stumbled and was over-taken by the appellant, hence, the latter could not have deliberately chosen the spot in which the crime was perpetrated.

Whenever the crime of rape is committed with the use of a deadly weapon, the penalty shall be reclusion perpetua to death.[11] In view of the absence of any mitigating or aggravating circumstance, the penalty of reclusion perpetua should be imposed upon the appellant instead of the supreme penalty of death.

WHEREFORE, the decision appealed from is hereby AFFIRMED, with the modification that the penalty is reduced from death to reclusion perpetua.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Santos, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

[1] People v. Ilagan, L-36560, May 28, 1975, 64 SCRA 170, 175; People v. Quiazon, L-44299 August 31, 1977, 78 SCRA 513, 523.

[2] U. S. v. Ramos, 1 Phil. 81; People v. Dazo and Tingzon, 58 Phil, 420; People v. Royeras, L-31886, April 29, 1974, 56 SCRA 666.

[3] Tedeschi, Eckert & Tedeschi, Forensic Medicine, Vol, II, p. 948.

[4] People v. Blance, 45 Phil. 113.

[5] People v. Modelo, 35 SCRA 639.

[6] People v. Dayag, L-30619, Mar. 29, 1974, 56 SCRA 439, citing Vreeland v. Vreeland, 21 A 627, 631; People v. Lacson, 53 O. G. 1823, 1838; People v. Nicanor Alvarez, L-34644, Jan. 17, 1974, 55 SCRA 81.

[7] People v. Gargoles, L-40885, May 18, 1978, 83 SCRA 282, citing People v. Espejo, L-27708, Dec. 19, 1970, 36 SCRA 400; People v. Carandang, et al., L-31012, Aug. 15, 1973, 52 SCRA 259; People v. Cardenas, L-29090, Apr. 29, 1974, 56 SCRA 631; People v. Boduso, L-30450-51, Sept. 30, 1974, 60 SCRA 60; People v. Ancheta, L-29581-82, Oct. 30, 1974; 60 SCRA 333; People v. Pascual, L-27569, October 28, 1977, 80 SCRA 1.

[8] People v. Boyles, L-15308, May 29, 1964, 11 SCRA 88.

[9] People v. Tarrayo, L-26489, April 21, 1969, 27 SCRA 953.

[10] People v. Laoto, 52 Phil. 401.

[11] Article 335, Revised Penal Code.

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