

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
POLICARPO CAMPESINO, EFREN MORENO, AND FEDERICO VISTAR,
ACCUSED, FEDERICO VISTAR, ACCUSED-APPELLANT.**

G.R. No. L-45480. July 31, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal from the decision of the Court of First Instance of Bohol at Tagbilaran (now Regional Trial Court) finding appellant Federico Vistar guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the offended party the sum of P10,000.00 as moral damages, and to pay one-third of the costs.

In a criminal information filed by the 3rd Assistant City Fiscal of the City of Tagbilaran upon the criminal complaint filed by the offended party, Ebelia Dopino, dated April 1, 1975, appellant together with Policarpo Campesino and Efren Moreno were charged with the crime of rape as follows:

"That, on or about the 6th day of March, 1975, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with the use of force and by intimidation and personal violence, did then and there willfully, unlawfully and feloniously have sexual intercourse with one Ebelia Dopina against her will, to the damage and prejudice of the latter in the amount to be proved during the trial of the case."

Since two of his co-accused were at large at the time of the trial and up to the present, only accused-appellant Federico Vistar was brought to trial. When arraigned on July 26, 1976, he entered a plea of not guilty. After due hearing, the trial court rendered the above-mentioned decision, convicting Federico Vistar for the crime of rape.

The prosecution's evidence which the lower court relied upon to make its finding of guilt beyond reasonable doubt is narrated in the People's Brief, as follows:

"On the morning of March 6, 1975 at Tagbilaran City, Evilia boarded the M/V Sweet Hope, an inter-island vessel plying the Tagbilaran-Cebu sea route. The boat was scheduled to leave at 10:00 o'clock that same morning. Since the time was too short for Evilia to see her brother, a worker in another boat, the M/V Sweet Home, she decided to go down and went to the 'Lolly B' store located at the wharf (pp. 4-5, tsn, Aug. 31, 1976).

While Evilia was sitting at said store, she met a certain Yaning de la Cruz who was passing by. Evilia asked for her destination and Yaning answered she was fetching water. As Evilia wanted to relieve herself, she walked with Yaning and went up the M/V Sweet Town, another vessel making trips between Cebu and Tagbilaran, while Yaning proceeded to fetch water. Two men, namely: Policarpo Campesino and herein appellant, followed her. When she came out of the comfort room, Campesino and appellant asked her if she was the younger sister of Verano, their co-worker at the M/V Sweet Home. She replied in the affirmative. They then invited her to take lunch as it was already noontime. She just refused the offer, afraid and apprehensive, but

was prevailed upon to accept it on their assurance that they would pay for the lunch and that they were truly friends of her brother (pp. 5-8, 29-30, id.).

Evilia dined in a cabin or 'camarote' of the M/V Sweet Town. There Campesino and appellant led her. After she had her lunch, a third man, Efren Moreno, joined them in the cabin which Campesino then closed. Fear came to Evilia. She wanted to run but they held her and forced her to lie on a cot. Campesino removed her dress while appellant and Moreno took off her panties. Then Campesino placed himself on top of her, covering her mouth with his right hand, and inserted his penis into her vagina until something warm came out of it. During the sexual act, appellant and Moreno held her thighs. Next to ravish her was appellant who likewise gagged her mouth with his hand, while Campesino and Moreno were holding her. Moreno took his turn, sexually assaulting her with the aid of his two companions (pp. 9-14, 31-33, id.). Evilia could not shout, much as she wanted to, since her mouth was 'chocked' by them (id.).

After satisfying their carnal lust, the trio went out of the cabin leaving their dizzy, naked victim lying on the cot. Evilia remained lying until about 2:00 o'clock p.m. when she felt better, her dizziness having disappeared. She wore her panties which was left on her right lap, already torn and smeared with her own blood (Exh. A) and put on another dress she got from her luggage. She did not bother to pick up from under the cot the dress she wore earlier placed there by her tormentors (pp. 14-16, 28-29, 37-38, id.).

Once out of the cabin Evilia pro-ceeded to the passengers' quarters where few passengers were already boarding. She lay on bed, crying and emotionally shaken. She did not tell anybody of her fate. Nor did she disembark to report the matter to the police as she was alone, fearful of reprisal. She remained lying until the boat hoisted anchor for Cebu at midnight (pp. 16-17, 34-36, id.).

The boat arrived Cebu early the following morning. Evilia did not go down yet, but waited for the M/V Sweet Faith to arrive, where another brother was working. She met her brother when the M/V Sweet Faith docked at the pier. But she did not tell him of her tribu-lation due to fear (pp. 17-18, 36-37, id.).

The first person to whom she con-fided her grief was her mother who fetched her in Cebu. Upon the advice of her mother, she submitted herself to a medical examination at the Bohol Provincial Hos-pital on March 16, 1975. Dr. Violeta A. Patos, the examining physician, issued the following day a medical certificate which indicates laceration in Evilia's vagina and abrasions on her left cheek (Exh. C, p. 2, Folder of Exhibits). Evilia was also investigated by the PC, the result of which is embodied in the sworn statement she executed on March 17, 1975 (Exh. B or Exh. 1, p. 1, id.)." [pp. 18-21, 37, 41-50, tsn, Aug. 31, 1976]

In this appeal, the accused-appellant raises the following assignment of errors:

1. The trial court gravely erred in convicting appellant of the crime of rape upon complainant's sole testimony, which is of very doubtful veracity;
2. The trial court also gravely erred in discrediting entirely the plausible evidence for the defense; and
3. The trial court finally erred in not acquitting appellant, at least, on reasonable doubt of his guilt.

After a careful evaluation of the pieces of evidence presented by both parties, We affirm the holding of the trial court.

Accused-appellant strongly denies his involvement to the crime charged. He claims that he, being the messboy of M/V Sweet Town, was at the mess hall serving lunch to the officers of the said ship since his midday duty was from 11:30 A.M. to 1:00 o'clock P.M.[1] He then advances the theory that the offended party merely fabricated this offense. To substantiate his claim, he argues that: (1) The offended party was not at the M/V Sweet Town on March 6, 1975 since her name was not listed in the passengers' manifest on that day (Exhibit 4). It was, therefore, improbable for her to be raped therein. Besides, no incident of rape was reported in the logbook of the said ship

on the aforecited date (Exhibit 3); (2) There were marked inconsistencies on what she declared in her affidavit (Exhibit 1) as contrasted in her testimonies on the witness stand (Exhibits 1-A to 1-A-2); (3) If ever she was raped on March 6, 1975, why did she not report the crime immediately to the captain of the ship, to the police or to her brother whom she met the following day? She only informed her mother about her heinous experience a week after she was abused;^[2] and (4) The panty (Exh. A) which the offended party wore at the commission of the offense was presented only for the first time on August 31, 1976, or about 17 months after the said offense was committed. Being a simple country girl, the offended party could not have thought of keeping the same for evidentiary purposes. For this reason, accused-appellant submits that the said panty was fabricated for the purpose of corroborating the testimony of the offended party.

Since the offended party was able to positively identify the accused including those who abused her as the sexual assault was committed at 12:00 o'clock noon, We rule that the positive identification made by the former on the accused-appellant as one of those who raped her prevails over the defense of alibi set up by the latter especially that the accused-appellant himself admitted that he was at M/V Sweet Town when the said crime was committed.^[3] We find the arguments advanced by the accused-appellant, in his attempt to convince Us that the offended party merely fabricated this offense, to be without legal merit because: (1) the presumption that an official duty has been regularly performed is only a disputable presumption (Sec. 5 (m) Rule 131, Rules of Court). The offended party has disputed this presumption by having shown that the officers of M/V Sweet Town failed to register her in the passengers' manifest despite her presence therein. The reason why this crime was not listed in the logbook of the said ship was due to the failure of the offended party and the accused, who were the only witnesses to the commission of herein offense, to report it; (2) the inconsistencies in the declarations of the offended party in her affidavit as compared to her testimonies on the witness stand do not affect her credibility since they refer to minor details only (People vs. Bawit, 102 SCRA 797; People vs. de Gracia, L-21419, Sept. 29, 1966) Such as who was with her when she went aboard the M/V Sweet Town, who invited her to the cabin, and whether or not accused Policarpo Campesino was naked when he inserted his penis into her vagina. On the important and decisive details, she was consistent in all the statements she made such as she was forced to lie down on the cot^[4] and was undressed.^[5] Thereafter, the accused took turns in abusing her while they continuously held her thighs^[6] and choked her mouth;^[7] (3) The offended party did not report the incident to anybody but waited instead for her mother because a victim of the crime of rape would like to report the offense done to her to someone of her fullest confidence and who could look at her plight with sympathy and understanding (People vs. Terrobias, 103 SCRA 321); and (4) The panty which the offended party wore at the time of the commission of the offense was presented as an evidence at the request of the fiscal.^[8] As an officer sworn to uphold the truth, We are not persuaded to believe that he (the Fiscal) will go to the extent of fabricating pieces of evidence for the sake of sending the accused to prison. One of the natural reactions of the victim of this heinous crime is to keep the dress and panty she was wearing at the time she was raped.^[9]

On the other hand, this Court in a long line of cases has held that a 16-year old country girl who barely finished the elementary grades^[10] will not maliciously impute that she has been raped because: (1) she does not want herself to be the subject of public ridicule, shame and dishonor; (2) she will not allow somebody to conduct an examination on her private parts; and (3) she does not want to go through with the troubles and humiliation of a trial (People vs. Selfaison, 1 SCRA 235; People vs. Baylon, 57 SCRA 115; People vs. Savellano, 57 SCRA 320; People vs. Olmedillo, 116 SCRA 173; People vs. Manzano, 118 SCRA 705). With her low education, the offended party would never have thought of sending a man to prison if not for her desire to bring to justice the person(s) who had grievously wronged her (People vs. Savellano, supra; People vs. Francisquite, 56 SCRA 764). This gains strength as the defense failed to cite any reason why the offended party would fabricate a story of rape upon herself and impute it to persons who were strangers to her.^[11] (People vs. Aleman, 102 SCRA 765; People

vs. Boado, 103 SCRA 607). Moreover, the findings of the trial judge that the victim while testifying showed no signs of insincerity or falsehood in her actions, manners, and behavior (People vs. Felipe, 115 SCRA 89; People vs. Reglos, 118 SCRA 344; People vs. Syquioco, 118 SCRA 413), are entitled to full faith and credit with Us.

The medical officer who conducted a medical examination on the offended party 11 days after the commission of the offense testified^[12] that it is probable that the complainant had previous sexual intercourse because her hymen has been perforated or lacerated and that the perforation or laceration could have occurred a few weeks or perhaps a month before the offended party was subjected to medical examination.^[13] The medical officer further testified that at the time she examined the offended party, the latter had linear abrasions in her face, near the mouth which were possibly a week or more old at the time of said medical examination.^[14] The offended party testified during her cross-examination that she sustained the linear abrasions as a result of the continuous choking of her mouth by the accused while they were abusing her.^[15] There is a reasonable and significant proximity of the time when the offended party suffered a hymenal laceration and her incurring of abrasions in her face to the time of the commission of herein offense. Without doubt the testimony of the medical officer further strengthened the credibility of the offended party.

Based from the foregoing, We hold that accused-appellant is guilty of having committed the crime of rape beyond reasonable doubt. We agree, however, with the Solicitor General that the accused-appellant, having committed three crimes of rape in conspiracy and complicity as well as direct participation in the commission of the two rapes perpetrated by the other two accused who remain at large, should be sentenced to three (3) separate penalties of reclusion perpetua. (People vs. Reglos, 118 SCRA 344; People vs. Vizcarra, 115 SCRA 743; People vs. Bohos, 98 SCRA 353; People vs. Babasa, 97 SCRA 673; People vs. Jose, 37 SCRA 450).

WHEREFORE, the decision under review is hereby MODIFIED in the sense that the accused-appellant Federico Vistar is sentenced to suffer three (3) separate penalties of reclusion perpetua, to indemnify the offended party for moral damages in the increased amount of P30,000.00, and to pay one-third of the costs. SO ORDERED.

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

[1] t.s.n., November 3, 1976, p. 91.

[2] t.s.n., August 31, 1976, p. 18.

[3] It is a well-settled doctrine that for alibi to be acceptable, it must be shown that the place where the accused was alleged to when the offense was committed must be located at such a distance that it is well nigh impossible for him to be at the scene of the crime (People vs. Tirol, 102 SCRA 558. See also People vs. Alcantara, 126 SCRA 425).

[4] t.s.n., Aug. 31, 1976, p. 9.

[5] Ibid., p. 11.

[6] Ibid., p. 10.

[7] Ibid., p. 45.

[8] Ibid., p. 27.

[9] The other is to know the identity of the assailants. (People vs. Selfaison, supra; People vs. Orteza, 6 SCRA 109)

[10] t.s.n., Aug. 31, 1976, p. 4.

[11] The offended party stated that the first time she met the accused-appellant was on March 5, 1976 when the latter with two others raped her, while the accused-appellant claimed that the first time he saw the offended party was when he was invited at the PC headquarters in Tagbilaran in connection with the complaint filed by the latter.

[12] A physician in a rape case is presented not to prove that the victim was raped but to show only that the latter had lost her virginity (*People vs. Opena*, 102 SCRA 755).

[13] t.s.n., Aug. 31, 1976, p. 50.

[14] *Ibid.*, p. 45.

[15] *Ibid.*, p. 32.

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