

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE MOSTOLES, JR., AND SALVADOR DE GUZMAN, JR., ACCUSED-APPELLANTS.**

*G.R. No. L-38644. September 30, 1983*

Ponente: ESCOLIN, J.

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**ESCOLIN, J.:**

A review of the decision of the Court of First Instance of Pangasinan, finding Vicente Mostoles, Jr. and Salvador de Guzman, Jr. guilty of multiple rape and sentencing "each of them to suffer the penalty of two (2) life imprisonments; to indemnify jointly and severally Myrna Salazar the sum of P20,000.00 as damages, without subsidiary imprisonment in case of insolvency, and to pay 2/5 of the costs."

On the basis of a verified complaint filed by the offended party Myrna Salazar, an information was filed charging appellants Vicente Mostoles, Jr. and Salvador de Guzman, Jr. and three others with forcible abduction with rape and robbery. Only the appellants and their co-accused Pepe Escalona were arraigned, as the two other accused, Florencio Solis and Edison Caras, were at-large.

Upon termination of the prosecution's evidence, the court a quo, on motion of Pepe Escalona, dismissed the case against the latter for insufficiency of evidence.

Appellants principally contend that the lone testimony of the complainants failed to satisfy the test of moral certainty required by law to justify the judgment of conviction.

The challenged testimony of Myrna Salazar, a maiden of 22 years, is summarized by the Solicitor General as follows:

"Around midnight on 13 February 1972, Myrna Salazar alighted from a bus coming from Dagupan in front of the Villa Rey Transit at Carmen, Rosales (p. 28, tsn, 14 March 1973). She waited there for a ride to barrio Barangobong, Villasis, Pangasinan (p. 29, tsn, 14 March 1973). She was not able to take a ride as the driver of the tricycle that she approached wanted to charge her P7.00 for the trip. She considered the amount excessive (p. 29, tsn, 14 March 1973)."

"Myrna Salazar decided to walk home. To reach home, she had to pass the Plaridel bridge at Carmen, Pangasinan. Upon reaching the first span of the bridge, she noticed that a tricycle was following her. The tricycle was driven by Florencio Solis, and had accused Vicente Mostoles and Edison Caras as passengers (pp. 29-31, tsn, 14 March 1973). When the tricycle overtook her, it stopped and the three (3) forced her inside covering her mouth in the process. Once inside the tricycle, the accused began kissing her (p. 31, tsn, 14 March 1973). The tricycle with the accused and the offended party aboard, proceeded to Barrio Tomana, Rosales, Pangasinan (p. 32, tsn, 14 March 1973). Accused Salvador de Guzman and Pepe Escalona followed later in another tricycle (pp. 33-34, tsn, 14 March 1973).

"Upon reaching Barrio Tomana, Myrna was brought to an irrigation ditch. The five accused, helping one another, tore her new pants and undressed her. Afterwards, each alternately had sexual intercourse with her

(pp. 35-36, tsn, 13 March 1973). The evidence also shows that before the accused had intercourse with her, they squeezed both of her nipples and took hold of both her legs, then forced her down by boxing her on the stomach (p. 36, tsn, 14 March 1973) and pinning her down (p. 37, tsn, 14 March 1973).

"After each of the accused had sexual intercourse with her, Myrna was taken back to Carmen by Salvador de Guzman (pp. 37-38, tsn, 14 March 1973). It was already about 6:00 o'clock in the morning (p. 38, tsn, 14 March 1973). Accused Vicente Mostoles, Edison Caras, Florencio Solis and Pepe Escalona were left behind. Upon reaching Carmen, the offended party left de Guzman immediately and reported to the policemen on duty at the police outpost at Carmen (p. 40, tsn, 14 March 1973). The policemen took her to the Municipal Hall of Rosales. When she arrived at the Municipal Hall, all the accused were already there (p. 41, tsn, 14 March 1973). Upon seeing the accused, she tried to box them (p. 41, tsn, 14 March 1973) in the presence of Mayor Yu (p. 42, tsn, 14 March 1973) but she was prevented from doing so by Patrolman Sagun (p. 9, tsn, 30 March 1973).

"The offended party was taken to the Eastern Pangasinan Hospital on 14 February 1973 by the police (Exhibit "A") where she was physically examined by Dr. Asuncion."

Pat. Agustin Sagun of the police force of Rosales, Pangasinan, testified that at about 6:00 in the morning of February 14, 1972, Myrna Salazar arrived at the police outpost in Barrio Carmen and reported the crime committed against her honor by the five accused; that after appellants and two of their co-accused had been arrested and brought face to face with complainant at the police head-quarters that morning, she pointed to them as her abusers and, in an outburst of indignation, hit them with her fists.

The pertinent entries made by the Chief of Police in the police blotter on August 14, 1972 read as follows:

"On or about 12:00 midnight, 13 February 1972, in Carmen, Rosales, Pangasinan, one Miss Myrna Salazar y Careg, 20 years old, single, and a resident of Barrio Barongobong, Villasis, Pangasinan, while on her way home along the Plaridel bridge within Carmen vicinity was held up by five (5) male persons boarded in a motorized tricycle, once they rode her they drove back in tricycle towards Tomana East with her mouth covered with their palm. Arriving at Tomana East, they dragged her in the irrigation canal wherein they abused her one after the other after which, due to the existence of their interest of gain said five (5) male persons took with them 2 rings, necklace and P100.00 pesos cash of the victim, all in the total value of P315.00. Victim was submitted to Tayug Emergency Hospital for physical examination and found positive. Four (4) suspects namely Vicente Mostoles, Salvador de Guzman, Florencio Solis and Edison Caras were picked up whereby victim identified them as the same persons who robbed and abused her." (Exhibit "A", p. 33, original record)

That same morning, Myrna was brought to the Eastern Pangasinan Hospital where she was physically examined by Dr. Romeo Asuncion, resident physician of said hospital. His findings are as follows:

FINDINGS: (External)

- Abrasions, dorsum, left hand; posterior aspect, left forearm; lateral aspect, right forearm.
- Contusion with ecchymosis, umbilical region.

PELVIC EXAMINATION:

- Abrasions and reddening of the left labia minora.
- Vagina admits with severe pain one finger.
- Hymen with laceration at 3:00 o'clock.

(Exhibit B, p. 3, Orig. Rec.)

Dr. Asuncion further declared that at the time of the examination, the victim was very weak and in a state of shock and distress.

Appellant Mostoles admitted having had carnal knowledge of the complainant, but claimed that the act was consummated with her consent. He stated that when he met Myrna in the night of February 13, 1972 at the northern approach of Plaridel bridge, he introduced himself and immediately professed his love for her, and that Myrna readily accepted his love; that after kissing her, he brought her under the bridge where they had sexual intercourse; that thereafter they proceeded to a dancing place at Tomana and after dancing with her once, he went home, leaving Myrna with his co-accused Salvador de Guzman, Florencio Solis, Edison Caras and Pepe Escalona.

For his part, appellant Salvador de Guzman, Jr. denied having had any sexual relation with the complainant.

The appeal is devoid of merit.

The allegation of appellant Mostoles that Myrna voluntarily submitted herself to his sexual desires at their very first meeting provokes disbelief. It runs counter to the inherent modesty and high morals of Filipino women.

The abrasions found by Dr. Asuncion on different parts of complainant's body give ample proof of the struggle and resistance she had put up against her assailants. Likewise, her claim that she was boxed on the stomach finds solid corroboration in the medical finding of "contusion with ecchymosis in the umbilical region." The charge of intercourse with the use of force is thus sustained by the physical evidence.

The bare denial by appellant de Guzman of any participation in the crime should likewise be rejected. As correctly observed by the trial court, "in weighing contradictory declarations and statements, greater weight must be given to the positive testimony of the witnesses for the prosecution than to the denials of the defendant (People vs. Bargon, 76 Phil. 702; People vs. Gonzales, et al., 76 Phil. 473; People vs. Macalindong, 76 Phil. 917; People vs. Osi, 85 Phil. 592)."

It is moreover significant that when appellants were brought face to face with the complainants at the police station just a few hours after the incident, she unhesitatingly pointed to them as the persons who abused her. At the same time, she vented her rage by hitting them with her fists. This spontaneous reaction on her part while still in the state of emotional shock emphasizes the positiveness and certitude of her identification of the rapists.

Appellants assail the credibility of complainant's testimony by citing the discrepancies between her statements at the preliminary investigation and the testimony she gave in open court. These variations are recited in their brief as follows:

"1. In her direct testimony, Myrna Salazar claimed that three persons namely Vicente Mostoles, Florencio Solis and Edison Caras were the ones riding in the tricycle who overtook her and grabbed her inside (tsn, p. 30, 14 March 1972 Myrna).

"However, in her Sworn Statement given on 14 February 1972 (Exhibit 2), particularly question No. 10 and its answer, the complainant pointed to Vicente Mostoles and Edison Caras only.

"2. In her direct testimony, Myrna stated that the other accused, Salvador de Guzman and Pepe Escalona followed in another tricycle (tsn, p. 30, supra).

"However, in Exhibit 2, particularly Question No. 10 and its corresponding answer, she pointed to Salvador de Guzman, Jr., Florencio Solis and Pepe Escalona.

"3. In her testimony in court, complainant described how she was allegedly abused in the following manner:

"They tore my new pants, undressed me, squeezed both my nipples, pulled my hair, then when I was fighting

back, they took hold of my two legs, then forced me down. I was down when they boxed me in the stomach (tsn, p. 36, 14 March 1972, Myrna)."

"In her sworn statement however (Exhibit 2), which was taken immediately after the incident, the complainant stated that she was boxed first before she was forced down.

"During the preliminary investigation before the Office of the Provincial Fiscal on 14 July 1972, (Exhibit 4, p. 7), the complainant stated that the accused first touched her nipples, then removed her dress and forced her down by holding her hands and feet.

"4. As to the order in which the accused allegedly abused her, the complainant continued to be inconsistent.

"In her court testimony, she stated that she was assaulted by the accused in the following order:

- a) Vicente Mostoles
- b) Florencio Solis
- c) Edison Caras
- d) Pepe Escalona
- e) Salvador de Guzman

(tsn, p. 37, 14 March 1972 Myrna)

"On the other hand, in the preliminary investigation conducted by the Municipal Judge of Rosales, on 16 February 1973, the complainant stated the following order in which the accused allegedly abused her.

- a) Vicente Mostoles
- b) Edison Caras
- c) Salvador de Guzman
- d) Florencio Solis and last
- e) Pepe Escalona

(Exhibit 3, particularly Question No. 9 and its corresponding answer)

"During the preliminary investigation before the Fiscal's Office, the complainant made another order, to wit:

- a) Vicente Mostoles
- b) Edison Caras
- c) Florencio Solis
- d) Pepe Escalona
- e) Salvador de Guzman"

The inconsistencies cited, referring as they do to the complainant's perception and recollection of mere inconsequential details of the incident, do not affect her credibility. In the absence of any showing that such inconsistencies were motivated by any deliberate attempt to distort the truth, the lower court did not err in giving credence to complainant's testimony. Moreover, considering that five persons participated in the commission of the crime and that she was then in a state of shock and distress, complainant could not have been expected to remember with precision such minor details as the number of persons riding in the tricycle which caught up with

her, or the sequence in which the accused took turns in abusing her, or whether they boxed her before they undressed her and touched her nipples. What is decisive is that her declarations at the preliminary investigation and the testimony she gave in open court are consistent with each other as to the main incident and the identities of the male-factors.

WHEREFORE, the judgment appealed from is hereby affirmed, with costs against appellants.

**SO ORDERED.**

Makasiar, (Chairman), Guerrero, Abad Santos, and Relova, JJ., concur.

Aquino, J., concurs, the penalty should be designated reclusion perpetua not cadena perpetua.

Concepcion, Jr., J., on leave.

De Castro, J., on sick leave.

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