

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUFO ADVINCULA, DEFENDANT-APPELLANT.*G.R. No. L-44643. March 31, 1980*

Ponente: ANTONIO, J.

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Automatic review of the decision of the Court of First Instance of Leyte, 13th Judicial District, Branch IV (Criminal Case No. 1296), finding Rufo Advincula guilty of the crime of rape, with the use of a deadly weapon, aggravated with the circumstance of dwelling, and sentencing him to the supreme penalty of death and ordering him to indemnify the offended party in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

Complainant Gloria Silvano, 30 years of age and married to Rodrigo Silvano, testified that at about 7:00 o'clock in the evening of September 8, 1973, she was in her house in Barrio Limbuan Dacu, Tanauan, Leyte, cooking rice for supper, while her three children were playing in their yard. Her husband was, at that time, in the house of his cousin trying to borrow money to replenish his capital in buying fish which he retailed in the market. While she was seated on a trunk by the door of her house, appellant Rufo Advincula surreptitiously entered and embraced her from behind. Completely taken by sur-prise, she tried to escape from his embrace but to no avail. To free herself, she bit appellant's left hand, causing him to loosen his hold. But he, in turn, boxed her on the right temple, causing her to fall on the floor. She was rendered momentarily unconscious as a result of the blow, and appellant succeeded in tearing her dress (Exhibit "A") and panties (Exhibit "B"). Appellant then positioned himself on top of her and when she regained momentary consciousness and shouted for help, he threat-ened to kill her with a small bolo (pisaw), covered her mouth and succeeded in having sexual intercourse with her. He afterwards kicked her, and after warn-ing her, on pain of death, not to tell her husband what he had done, appellant fled from the house. Crying with anguish, she immediately ran out to seek the assistance of the authorities. She informed her husband, who had by then arrived, that she had been sexually abused by appellant. She and her hus-band then proceeded to the house of Barrio Captain Dionisio Magnawa to report the incident. Acting upon this complaint, the Barrio Captain requested assistance from the PC detachment at Olot for the apprehension of appellant. Later, four PC soldiers arrived and went after the appellant. The following morning, the offended party was examined at the Leyte Provincial Hospital by Dr. Pablo Aniceto.

Dr. Pablo Aniceto, resident physician of the Leyte Provincial Hospital, declared that he examined Gloria Silvano on September 9, 1973 and found that she sustained the following injuries, to wit:

"Hematoma (1) right eye - 3 cm. by 2 cm. orbital region lateral 2 chin 2 cm. by 2 cm.

Abrasions - multiple linear:

- (1) left mandible
- (2) anterior portion of neck
- (3) distal 3rd left arm, posterior aspect

External exam: -

- (1) pubic hair sparse
- (2) abrasions - perineum
- (3) vagina parcous
- (4) abrasions labia minora, right

Smear of spermatozoa - negative for spermatozoa"

He further testified that the hematoma on the right eye and right portion of the chin of complainant might have been caused by a blow from a closed fist, and the abrasions could have been caused by sharp objects such as fingernails or other sharp instru-ments.

Dionisio Magnawa, Barrio Captain of Limbuan Dacu, Tanauan, Leyte, corroborated the testimony of the offended party to the effect that she and her husband went to see him in the evening of September 8, 1973 to report the incident. He testified fur-ther that he noticed that Gloria's face was injured, her hair disarranged and her dress torn, and that she was crying. Acting on that complaint, he re-requested the PC detachment in Tolosa to arrest Rufo Advincula. At about past 8:00 o'clock that evening, Rufo Advincula was apprehended in his (appellant's) house at Barrio Limbuan Dacu by three PC soldiers.

Appellant, while admitting that he had sexual intercourse with the offended party, however, denied having boxed and raped her. He declared that they were already sweethearts during the years 1959 and 1960, but their relationship did not ripen into marriage because she was hesitant, telling him to wait for the approval of her parents. In the mean-time, he left for Cebu in December 1959 to work as cashier on the store of his aunt. After staying for one month in Cebu, he went to Manila to look for a better job. In 1960, while he was in Manila, he learned that Gloria had gotten married. That same year he returned to Limbuan Dacu, Tanauan, Leyte, and in the following year he married his present spouse, with whom he begot two children.

He admits that in 1968 he was convicted and imprisoned for killing one Lorenzo Monte, and that he served sentence in Muntinlupa in 1969, from where he was later transferred to the Iwahig Penal Colony. Upon his release in November 1972, he returned to Barrio Limbuan Dacu and stayed in the home of his father. According to appellant, he met the offended party again sometime in June 1973, and that on Sep-tember 5, 1973, he met her in the house of his brother where they talked about old times, and after kissing her, they made a love tryst in the coconut groves across Gunarona River in the afternoon of September 7, 1973. As agreed, they met at the de-signated rendezvous and they had sexual intercourse. She allegedly proposed to leave her husband and live with him (appellant) in Manila but he told her to wait because he had no money. After their conver-sation, they parted and, to avoid suspicion, she stayed to gather firewood.

Appellant claims that she filed the charge against him because she was ashamed of what she had done.

We are in accord with the trial court's evalua-tion of the evidence, to wit:

"* * *. The story of the complainant is re-plete with details that could not ordinarily be imagined or fabricated. The fact that the complainant sustained injuries on her face and dif-ferent parts of her body and immediately reported the outrage to the captain of her barrio, without any sufficient intervening time for her to fabricate her account, is convincing proof of the com-mission of the crime. This circumstance was testified to by Barrio Captain Dionisio Magnawa of Limbuan, Tanauan, Leyte. The accused insi-nuates that the complainant instituted this case out of shame on being discovered that she had amorous relations with him. The court cannot believe that this circumstance alone could have forced the complainant to concoct a rape story. The accused himself, in stating that he had amo-rous relations with the offended party, gave no evidence that Gloria's husband discovered their alleged affair. Besides, a country girl like the offended party herein would

not expose herself publicly airing acts repugnant to modesty and her honor as a married woman unless she is urged by the force of sincerity and by the honest desire to obtain redress for her grievance.

"Although there is no direct evidence corroborating the testimony of the offended woman regarding the very acts complained of, as there were on that occasion no witnesses present, nevertheless there is circumstantial evidence to corroborate her story. We have the testimony of Barrio Captain Dionisio Magnawa that at about 7 o'clock in the evening of September 8, 1973, Gloria Silvano and her husband went to his house to report the incident and requested him to have the accused Rufo Advincula arrested by PC soldiers and Gloria, who was crying and with crumpled hair, showed him injuries on her face. No motive has been shown by the defense to vitiate this testimony of Dionisio Magnawa." (CFI Decision, pp. 11 to 12. Rollo, pp. 18-19).

In his brief, the counsel for appellant contends that "improbabilities and contradictions in the testimony of complainant Gloria Silvano" have impaired seriously the credibility of her testimony. Thus, he contends that in complainant's affidavit (Exhibit "1"), she declared that "* * * after Rufo tore my dress and my underpants, and then took out his testicles and inserted it into my penis Rufo succeeded in having sexual intercourse * * *". The use of the term "testicles" instead of the word "penis", or the word "penis" instead of "vagina" in the affidavit of Gloria before the police (Exhibit "1") arose from the mistake committed by Pat. Francisco Mendiola who translated the declaration of the offended party. Such an absurdity cannot be attributed to the complainant. As the trial court observed: "It must be borne in mind that the statement of the offended party was taken by Patrolman Francisco Mendiola who is apparently deficient or poor in English * * *".

Appellant's counsel further points out that the statement of the complainant in her affidavit is inconsistent with her testimony in court. Thus, in her affidavit (Exhibit "1-B"), she stated that after the appellant had raped her and left her house, her husband arrived and she informed him of what appellant did to her, while in her testimony in Court on February 22, 1974 (Exhibit "3"), she declared that she went to the house of Eusebio Silvano and met her husband on the way.

The fact is that complainant confirmed the statement in her affidavit (Exhibit "1-B") that her husband arrived at their house after the appellant left when she testified, thus:

"COURT:

Q.

After you were abused by Rufo Advincula, did you meet your husband?

A.

Yes, sir, because he already arrived at our house.

Q.

Did you go down your house immediately after you were allegedly abused by Rufo Advincula?

A.

I went down only when my husband arrived at the house." (t.s.n., pp. 33-34, Hearing on August 19, 1974).

"Q.

So you are very sure now that you did not meet your husband on the way but you only met him in your house, is that what you want to say?

A.

Yes, sir." (t.s.n., p. 4, Hearing on October 31, 1974).

Appellant's counsel further points out that when the complainant testified on February 22, 1974 (Exhibit "3-B"), she made it appear that her child-ren were with her husband in the house of Eusebio Silvano when she was raped. But the offended party denied having answered in that manner. She affirmed in court that her "children were downstairs in the yard playing" at the time she was raped.[1]

Appellant further claims in his brief that it was improbable for appellant to have raped the vic-tim at seven in the evening when all "people in the neighborhood were still awake" and that he would have been a "very brave trespasser", so lacking in elementary caution as to have committed the crime at that time.

As correctly observed by the Solicitor General, seven o'clock in the evening is already a late hour in the barrio, considering its isolation from the poblacion. There is no iota of proof that all the people in that barrio were still awake, much less is there any indication that the other residents of the place were so situated that they could have heard the cries for help of the ravished victim. Considering that man's bestial instincts sometimes ignore convention, time and place, it is not highly improbable that the crime of rape was committed at that place and hour by appellant.

Differences between the sworn statement before the police, relating to minor details as to which the perceptions and recollection of the witness may differ, and complainant's testimony in court, do not affect her credibility, especially considering the shock, excitement and haste under which the complainant was laboring when she executed the statement.[2]

Finally, it is a general rule in criminal, as well as in civil cases, that where the findings of fact depend upon relative credibility of witnesses who testified in open court, due consideration should be given to the superior position of the trial judge, who saw and heard them, to appraise their credibi-lity, and his findings should not be disturbed unless it appears from the record that facts or circumstan-ces of weight were overlooked; or their significance misinterpreted; or there was inherent weakness in the supporting evidence. Such contra-indications do not appear in the case at bar.

The imposable penalty is death, in view of the fact that the crime of rape was committed with the use of a deadly weapon,[3] and aggravated by the circumstance of dwelling.[4] However, some Members of the Court are of the view that only reclusion perpetua should be imposed, as the appellant has been under detention for a considerable period of time.

WHEREFORE, the appealed decision is AFFIRMED, but for lack of necessary votes, the death penalty is hereby reduced to reclusion perpetua.

SO ORDERED.

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

Teehankee, Acting C.J., concurs in the result.

Abad Santos, J., took no part.

[1] T.s.n., pp. 15, 19, Hearing on July 8, 1974; pp. 14-15, Hearing on October 31, 1974.

[2] People v. Ablog, L-15310, October 31, 1962, 6 SCRA 437.

[3] Article 335, Revised Penal Code.

[4] Article 14, paragraph 3, Ibid.

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