

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DALMACIO BARBO, DEFENDANT-APPELLANT.***G.R. NO. L-30988. March 29, 1974*

Ponente: AQUINO, J.

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Dalmacio Barbo appealed from the decision of the Court of First Instance of Eastern Samar, Guiuan Branch, finding him guilty of rape, sentencing him to reclusion perpetua and ordering him to indemnify Maria Corre Waniwan in the sum of six thousand pesos (Criminal Case No. 588).

As is usual in criminal cases, the appeal hinges on the issue of credibility. Maria Waniwan's story that she was raped was contradicted by Barbo. He stoutly affirmed that he copulated with her in his house because they had agreed to live together as husband and wife. Whether it is Maria or it is Barbo who should be given credence depends on whose version has verisimilitude or whose story is tinged with falsehood.

Prosecution's evidence. — On November 28, 1968, Maria Waniwan, a twenty-three-year old widow with four children (she was widowed in May, 1968 and she had finished the intermediate course), was living in her father's house located at the poblacion of General Mac Arthur, Eastern Samar. At about eight o'clock in the morning of that day, she was walking on a trail used by tractors in Sitio Canononghan, Barrio Camcueves, General MacArthur, on her way home after gathering from her farm in that place camote and cassava which she was carrying in a basket on her back. She had passed that trail several times. Somewhere along that trail was the house of Dalmacio Barbo, a thirty-five year old farmer, with six children but separated for four years from his wife who was in Manila. It was her custom to go to the farm whenever she needed provisions. She passed the yard of Barbo's house in going to her farm which used to be cultivated by her husband.

Suddenly, Barbo coming from behind, took her bolo out of its scabbard which was tucked at her waist. He placed it on the ground. She had known Barbo (Masiong) for a long time. He held her by the shoulders and tried to throw her down. She tried to extricate herself from his clutches. She shouted for help for about half an hour. He was able to make her lay flat on the ground. They wrestled for about an hour. When she was eventually weakened, Barbo raised her dress. Since she was not wearing any panty, he was able to have coitus with her once. She suffered injuries on the back of her body (the doctor's certificate, Exh. A, does not mention any back injuries).

After the carnal intercourse, was consummated, Barbo allegedly poked the bolo at her and said: "You come with me or I will stab you." He brought her to his house situated in Barrio Dumrog. He confined her in a room and watched her so that she could not escape. He had sexual intercourse with her three times against her will. She consented to the coition because she was afraid of him. The next morning at around ten o'clock she was rescued by her father and a policeman.

She declared on cross-examination that the three acts of sexual intercourse occurred at night while she was in bed with Barbo. She took her supper before going to sleep with him. She admitted that Barbo fell asleep. She said that she did not leave the house while he was asleep because "it was nighttime and something might happen and I

(she) might be harmed by animals." She breakfasted with him on the following morning. They conversed while having breakfast. She had three meals with him before her father and the policeman arrived.

Maria admitted that Francisco Cordero, who lived nearby, was her "friend." He passed by Barbo's house at around six o'clock in the evening of November 28th. She tried to talk with Cordero but Barbo allegedly did not allow her to communicate with him. She did not ask help from Cordero nor tried to send, through him, a message to her father (49 tsn). She testified on interrogation by the court as follows:

Q. Was the accused armed that time when he was struggling with you? — A. Hone, he placed the bolo on the ground.

Q. After the sexual intercourse with him, what did you tell the accused? — A. He accompanied me to the house. (50 tsn).

Note that Maria was evasive. She did not categorically answer the court's query as to what she told Barbo after the alleged rape. In her affidavit before the mayor, she did not mention any injuries suffered by her.

In the meantime, at around three o'clock in the afternoon of the same day, November 28th, Agapito Corre, a town councilor and the brother of Maria's mother, was informed by one Esperanza Sumiguin that Maria was raped by Dalmacio Barbo. At seven o'clock in the morning of the next day, November 29th, Corre contacted Pedro Waniwan, Maria's father, at his farm located in Sitio Cadac-an, which is six kilometers away from the town. Corre wanted the father to know the incident before it was reported to the chief of police.

Pedro Waniwan repaired to the poblacion and apprised the chief of police of what had befallen his daughter. That functionary assigned Patrolman Pedro Cabides to accompany Pedro Waniwan to Sitio Canononghan. The two arrived in that place at about eleven o'clock in the morning. Upon seeing her father, Maria ran towards him and allegedly exclaimed: "Father, you come to my aid. I was raped by Dalmacio Barbo." Pedro replied: "You are unlucky, my daughter."

At Pedro Waniwan's request, Policeman Cabides placed Barbo under custody and, with Maria, brought him to the chief of police. Maria complained to him that she had been ravished by Barbo. She told the chief of police: "Chief, you take care of this fellow because he raped me."

At about five o'clock in the afternoon of November 29th, Maria Waniwan, on her own volition, was examined by Doctor Antonio N. Edles, the town's municipal health officer. The doctor is her second cousin (their grandparents were brothers). He found that she sustained external injuries consisting of multiple abrasions two-thirds of an inch wide on the upper part of her right eyelid, scratches on the posterior side of her right thigh, and "pain and tenderness over the lower third of the right forearm." The internal examination revealed the "presence of abundant white sticky fluid under the vaginal orifice and vaginal canal" (Exh. A).

On November 30th, Maria's complaint for rape against Dalmacio Barbo y Belicario was filed in the municipal court (Exh. B).

Appellant's evidence. — Barbo testified that he had known Maria Waniwan for a long time because they lived in the same town. In October, 1968 he started courting her. He knew that she was a widow. He used to visit her in her house in the town. He would converse with her when she happened to be in the barrio and passed by his house. They later agreed to live as husband and wife.

On November 25, 1968, he went to her residence in order to fetch her and bring her to his house. She was not able to go with him because "there was nobody to take care of her children." On that occasion, she said: "I cannot go with (you) now but on November 28, I will go to your house alone."

In fulfillment of her promise, she went to Barbo's house in the barrio at around eight o'clock in the morning of

November 28, 1968. After her arrival, he went to his farm to procure some provisions. He returned to the house at nine o'clock. Maria did not leave the house. He slept with her in the evening of that day.

They slept together because they "were living as husband and wife." On that night, they had sexual intercourse three times. In the course of the sexual congress, "her buttocks was (were) continuously moving." She neither shouted nor cried during the coition.

Barbo denied that he grabbed Maria's bolo, wrestled with her and had forcible sexual intercourse with her in the morning of November 28, 1968. He branded as a lie her testimony that, after forcibly copulating with her, he threatened her with her bolo and intimidated her into going to his house. He said that Maria lied when she testified that he guarded her and threatened her with a bolo so that she should not escape.

He said that, on the following morning, after he had finished cooking, Maria's father and a policeman went to his house. They took him and Maria to town. He was brought to the chief of police who investigated him while Maria was in her father's house. He told the chief of police that he and Maria had agreed to live together as husband and wife.

He said that, when Maria left his house, she forgot to take with her three ordinary dresses, one brown, one green and the third blue. Presumably, after he was arrested, he brought the dresses inside the jail. He intended to present them as evidence. They were contained in a buri bag. Pablo Waniwan, Maria's brother, who happened to be in jail (having been convicted of homicide) stole the bag. Barbo could not produce the dresses at the trial.

Barbo said that one Francisco Cordero lived in a house near the creek which was about thirty meters from his house, a fact known to Maria. Cordero went to Barbo's house and asked Maria to go with him but she refused. Cordero and Maria are cousins (68 tsn).

The fiscal's cross-examination and the court's interrogation of Barbo strengthened his defense as may be seen from the following portions of his testimony wherein he stated that Maria was pressured by her father and uncle to file the complaint because Barbo was a married man:

Q. (by Fiscal) And on November 25, 1968 that was the first time you went to the house of complainant? — A. Yes, sir.

Q. In previous occasions you have never visited Maria Waniwan in her house? — A. I used to be there.

Q. For how long before November 25, 1968 did you visit Maria Waniwan in her house? — A. I used to be there (sic).

Q. When did you begin courting Maria Waniwan? — A. In the month of October.

Q. You said you have relationship with Maria Waniwan. How do you know that? — A. Because we have an agreement to live as husband and wife.

Q. When was that? — A. In the month of October.

Q. You said that the woman voluntarily went to your house, did I get you right? — A. Yes, sir.

Q. As a matter of fact she stayed with you for a day or more? — A. Yes, sir.

Q. And besides that you went to her house on November 29, 1968? — A. Yes, sir.

Q. And as a matter of fact you cooked in her house on November 29, 1968? — A. Yes, sir.

Q. And your relationship with Maria is good? — A. Yes, sir.

Q. Did you consider why she filed this case against you? — A. The aggrieved people are his (her) father and uncle.

Q. Why did you say that it was her father or uncle that filed the complaint? — A. Because I am a married man.

Q. (by Court) Did you not tell the father of the complainant and the police that you agreed to live together as husband and wife? — A. I told them.

Q. How did you tell the father? — A. I told him by saying: "Man Pedro, your daughter and I have an agreement to live together."

Q. Did the complainant confirm what you told the father in the presence of the police? — A. Yes, sir.

Q. What did the complainant say? — A. That we had an agreement.

Q. If the complainant confirmed that you have both agreed to live together as husband and wife, can you tell the Court the reason when she was investigated that she was charging you of raping her? — A. Because she was pressured by her father and uncle.

Q. It was only your suspicion that she was pressured? — A. I am sure of that.

Q. But that is only your suspicion and opinion? — A. No, sir, it was the uncle and father. (69-73 tsn)

Felix Israel, a fifty-four-year old guard at the provincial jail, testified that Barbo complained to him about the loss of his buri bag. Israel investigated the complaint. He found that the bag was taken by Pablo Waniwan, a fellow prisoner of Barbo and the brother of Maria. Pablo confessed to Israel that he took the dresses and gave them to his father, Pedro Waniwan. Israel asked Pablo Waniwan to sign a statement in the dialect (Exh. 2), confirming his oral confession. Its translation, as agreed upon by the parties, is as follows:

"I, Pablo Waniwan, hereby confirm the truth that I was the one who took the three (3) dresses of my sister (Maria Waniwan) which was then deposited in the month of June, 1969 for which I hereby sign below." (77 tsn).

Maria Waniwan unsuccessfully tried to rebut the evidence of the defense regarding the three dresses which she left in Barbo's house and which signify that she voluntarily went to his house. Her flimsy rebuttal testimony is as follows;

Q. The witness (Barbo) further testified that your dresses consisting of three (3) dresses (sic) were in his possession, can you justify why it was in his possession? — A. Yes, sir.

Q. Please explain? — A. Those dresses were left by me in the house because when I saw my father and fetching me, I went with them and forgot all about them (sic).

Court: You left them in the house of the accused? — A. Yes, sir. (81 tsn).

The trial ended on that evasive but meaningful answer of complainant Maria Waniwan. She impliedly admitted that her three dresses were in Barbo's house but she failed to explain why they were brought there.

Findings. — The trial court erred in stating that Barbo interposed an alibi. He did not do so. In substance, his defense, as already stated, is that he did not commit any rape because he and the complainant had covenanted to live together as husband and wife. Pursuant to that pact, Maria went to his house. She voluntarily copulated with him. As noted, they had sexual congress three times on the night of November 28, 1968. Maria's father and uncle, a councilor, coaxed her into filing the complaint against Barbo because he was a married man.

There are indications in the record that the prosecution of appellant Barbo was railroaded. The complaint and

affidavit of Maria Waniwan were sworn to before the mayor and then filed with the municipal judge. They contain misspellings, grammatical errors and incoherencies. Apparently, the mayor hastily conducted the preliminary examination although there was no showing that the municipal judge and his auxiliary, if any, were absent (See Sec. 3, Rule 112, Rules of Court). The judge took over only during the second stage of the preliminary investigation which Barbo waived.

The mayor issued the warrant of arrest. The record does not show any compliance with the requirement that "no warrant of arrest shall be issued by any municipal judge in any criminal case filed with him unless he first examines the witness or witnesses personally" and that the examination should be under oath and reduced to writing in the form of searching questions and answers (Sec. 87, Judiciary Law).

It is difficult to rape a normal, healthy adult woman without the help of confederates or without terrifying her with a weapon. If she resists, the likelihood is that the lustful desire of her assailant will be foiled. The resistance would, as in this case, be more effective in an open field where there are more chances of eluding the assailant or frustrating his advances. The rape committed by a man without the assistance of other persons is possible but is a rare case. (2 Cuello Calon, Derecho Penal, 10th ed, p. 541).

While rape is a detestable crime, "it must be remembered that it is an accusation easy to be made, hard to be proved, but harder to be defended by the party accused, though innocent" (2 Chitty's Blackstone 165 cited in U.S. vs. Flores. 26 Phil. 262, 269).

A woman who struggles against a satyr usually sustains injuries. Her dress and underwear might be torn. In this case. Maria Waniwan did not present any torn apparel as evidence that she opposed with might and main Barbo's supposed attempt in broad daylight (eight o'clock in the morning) to lie forcibly with her on the barrio trail where tractors passed. It is doubtful if that act took place. She testified that she suffered back injuries. The medical certificate, issued by her second cousin, does not mention back injuries (except for alleged scratches on the posterior side of the right thigh). Her affidavit does not mention any injuries (Exh, 1).

She failed to explain satisfactorily why during the more than twenty-four-hour period that she stayed in Barbo's house she did not attempt to escape especially during those moments when he was asleep or his vigilance was relaxed. She could not justify her failure to go to her cousin's house which was only thirty meters away nor secure his help when he saw her in Barbo's house. She could not explain convincingly why she left her three dresses in Barbo's house and why her father instigated her brother, a prisoner, to steal those dresses from Barbo while in jail.

It is noteworthy that the chief of police filed the case after conferring with Councilor Corre, her maternal uncle. Although an outrage was supposedly committed against Maria and she was held in subjection by the alleged rapist, Corre did not report the case immediately to the police. He had to talk first with his brother-in-law, Maria's father, on the matter of terminating the alleged continuing rape being committed against her.

Only the complainant testified as to the alleged rape. "In crimes against chastity, the testimony of the injured woman should not be received with precipitate credulity. When the conviction depends at any vital point on her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of utmost value in judging matters of this kind" (People vs. Fausto, 51 Phil. 852). "The books disclose too many instances of false charges of rape, attempted rape and kindred offenses to permit the courts to enter a judgment of conviction of a crime of this nature without having in mind the possibility that the complaining witness may have been actuated by some sinister motive in bringing the charge" (U.S. vs. Ramos, 35 Phil. 671, 677).

In the instant case, there are grounds for suspecting the good faith of the complainant in filing the rape charge.

There is an aura of improbability as to the manner the alleged rape was committed. Her testimony is not satisfactory and convincing. A scrupulous scrutiny of the record induces a reasonable, intuitive doubt as to appellant's guilt even without reading his illegibly typed brief.

WHEREFORE, the trial court's judgment is reversed and appellant Dalmaeio Barbo is acquitted of rape with costs de oficio.

SO ORDERED.

Zaldivar (Chairman), Fernando, Barredo, and Fernandez, JJ., concur,
Antonio, J., did not take part.

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