

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY PANISALES ALIAS “RICAL”, ACCUSED-APPELLANT.

Ponente: INTING, J.

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INTING, J.:

Before Us is accused-appellant Rudy Panisales' Appeal[1] assailing the Decision[2] of Branch 25, Regional Trial Court (RTC), Koronadal City, convicting him of Rape. The dispositive portion of the Decision states:

WHEREFORE, the foregoing premises considered, the accused Rudy Panisales alias “Rical” is hereby CONVICTED as principal of the felony of RAPE and he is hereby sentenced to a penalty of imprisonment of reclusion perpetua with all its accessories. The accused is also ordered to pay the victim, Marilou Lagos y Chavez, the amount of fifty thousand pesos (P50,000.00) by way of moral damages, and thirty thousand pesos (P30,000.00) by way of exemplary damages. Nevertheless, the accused shall be credited in the service of his sentence with full time during which he has undergone preventive imprisonment if he had agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners pursuant to the provisions of Article 29 of the Revised Penal Code.

SO ORDERED.

The facts of the case are as follows:

Version of the Prosecution[3]

At around 9:30 in the morning of May 26, 2000, Marilou Lagos (Marilou) was suddenly awakened by Rudy Panisales (Rudy), who was pointing a bolo at her chest. Rudy dragged her to a room, pushed her to a bed, and ordered her to undress. When Marilou refused, Rudy pinned her down and undressed her himself. Marilou struggled and begged Rudy to stop but her efforts and pleas were in vain. Rudy succeeded in copulating with her. After about three minutes of Rudy's penis thrusting inside her vagina, Marilou felt something wet in her vagina.

After the incident, Rudy warned Marilou not to tell her parents or else she will be killed.

Marilou put on her clothes and fixed herself. She then saw Rudy walking towards the highway. Shortly thereafter, she saw Rudy heading back to their house. To avoid Rudy, she jumped over a structure and ran towards the house where the wake of her cousin was held. Rudy chased and tried to catch up with Marilou but failed.

Upon reaching the house, Marilou told her mother of the incident. Her mother told their relatives of what happened prompting the latter to go after Rudy. The relatives were unsuccessful.

They reported the incident to the authorities. They brought Marilou to the hospital for examination and the results revealed that there was penetration with the presence of sperm in her vagina.

Consequently, an Information for Rape was filed against Rudy, to wit:

That on or about the 26[th] day of May, 2000, at about 9:30 o'clock in the morning, at Upper Paredes, Barangay Zone IV, Municipality of Koronadal, Province of South Cotabato, Philippines, and within the

jurisdiction of this Honorable Court, the said accused did then and there, willfully, unlawfully, and feloniously have carnal knowledge of MARILOU CHAVEZ LAGOS by means of force and intimidation and with the use of a deadly weapon, a bolo, against her will.

CONTRARY TO LAW.

Version of the Defense[4]

At around 6:00 in the evening of May 25, 2000, Rudy was at the STM Terminal in Koronadal City working as dispatcher. At that time, Patok, the brother of Marilou, fetched and informed him that Marilou's father wanted to talk to him at the house where the wake of Neneng Fagutao (Neneng) and her daughter was held.

Rudy went to the wake. While consuming some liquor, Patok and his father discussed with Rudy the brutal death of Neneng and her daughter perpetrated by Oscar Fagutao (Oscar). Marilou's father then broached the idea to Rudy, who has been incarcerated a couple of times, that he will file a case against Rudy so that Rudy would go to jail where Oscar is being detained and exact revenge by killing Oscar. Rudy did not accede to the plan contending that he is now a reformed man and has a family to take care of.

Rudy decided to sleep at a nearby house which is also owned by Marilou's father. At around 8:00 in the morning of May 26, 2000, he left the house and headed to STM Terminal for his work. On his way to work, he met Marilou who asked him for some money to buy food. He gave Marilou P50.00 instructing her to buy him a pack of More cigarettes and use the excess amount for the food.

He then took a tricycle and proceeded to the terminal. At the terminal, another dispatcher informed him to proceed to Alabados Terminal because a certain Rutsel Azarcon was looking for him. Shortly after arriving in Alabados Terminal, policemen arrested him based on the complaint of rape filed against him by Marilou.

While being detained, Marilou's father visited him three (3) times. In all these visits, Marilou's father offered to withdraw the case against him if he would kill Oscar, who happened to be detained in the same cell. As a result of Rudy's refusal to participate in the plan of Marilou's father, the rape case against him was pursued.

After trial, the Regional Trial Court (RTC), Branch 25, Koronadal City, convicted Rudy. Aggrieved, he filed the instant appeal and raised the following sole error:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Our Ruling

The appeal is without merit.

“[T]he elements of rape under par. 1(a) of Art. 266-A of the Code are the following: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force or intimidation.[5]”

In the trial of the instant case, Marilou identified Rudy as her perpetrator when she testified in court; she testified that his penis was inside her vagina; the medical examination conducted on her revealed that there was penetration and the presence of spermatozoa in her vagina; and she likewise testified that he used a bolo and his superior strength to force her into carnal knowledge with him.

Invoking the “extreme-caution test” and the “post-incident deportment test,” Rudy argues that Marilou is not credible as her testimony is full of inconsistencies, to wit:

- She said that she was able to kick Rudy in the stomach; yet she also said that she could not move because Rudy was straddling her abdomen;
- She testified that should a person scream from the house where the rape happened, people from the house where the wake took place would hear the scream; yet she testified also that she did not scream because it was useless as no one would hear her;
- She said she was able to scratch the face of Rudy; yet she stated also that she was not able to inflict any injury on Rudy;
- She claimed she could not repel the acts of Rudy; yet she testified that there was a time when he released her hands;
- She also testified that the sexual intercourse she had with Rudy was her first; yet the doctor who conducted a medical examination on her said that she has had at least 10 previous sexual intercourses.

Because of the foregoing, Rudy asserts that his conviction is not beyond reasonable doubt since the testimony of Marilou is incredible and does not warrant belief.

The first four alleged inconsistencies pointed out by Rudy relate to Marilou's resistance to the carnal act. He argues that Marilou did not offer any serious resistance, hence, she is not credible. The contention does not convince. The Supreme Court once held[6]:

Physical resistance need not be established in rape when threats and intimidation are employed and the victim submits herself to the embrace of her rapist because of fear. xxx [I]t must be emphasized that force as an element of rape need not be irresistible; it need but be present, and so long as it brings about the desired result, all considerations of whether it was more or less irresistible is beside the point. So must it likewise be for intimidation which is addressed to the mind of the victim and is therefore subjective. xxx Intimidation includes the moral kind as the fear caused by threatening the girl with a knife or pistol. And when such intimidation exists and the victim is cowed into submission as a result thereof, thereby rendering resistance futile, it would be extremely unreasonable, to say the least, to expect the victim to resist with all her might and strength. If resistance would nevertheless be futile because of continuing intimidation, then offering none at all would not mean consent to the assault so as to make the victim's participation in the sexual act voluntary. xxx It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance.

Anent her virginity, let it be stressed that "virginity is not an element of rape.[7]" "Even the moral character of the victim is immaterial.[8]"

These alleged inconsistencies do not relate to the elements of rape. Moreover, "It is also basic that inconsistencies bearing on minor details or collateral matters should not adversely affect the substance of the witness' declaration, veracity, or weight of testimony.[9]" Marilou's testimony on the matters related to the elements of rape are direct and consistent. She was straightforward in: (1) identifying Rudy as the perpetrator; (2) stating that Rudy's penis was inside her vagina and this is confirmed by the medical examination conducted on her; and (3) testifying that Rudy used a bolo and his superior strength to subdue her to his carnal desires. The Supreme Court once held that "[w]hen the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that essential requisites of carnal knowledge has thereby been established[10]"

By pointing out these alleged inconsistencies, Rudy is asking this Court to assess the credibility of Marilou. However, "[w]ell-settled is the rule that the findings of facts and assessment of credibility of witnesses is a matter

best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh or the scant or full realization of an oath – all of which are useful for an accurate determination of a witness' honesty and sincerity.[11]"

WHEREFORE, the instant appeal is DENIED. The Decision dated February 28, 2012 of the Regional Trial Court, Branch 25, Koronadal City in Criminal Case No. 4795-25 is AFFIRMED.

SO ORDERED.

Camello, J. Ch., and Perez, JJ., concur.

[1] Rollo, pp. 31-39.

[2] Rollo, pp. 41-47.

[3] Rollo, pp. 32-33 and 69-71.

[4] Rollo, 33-34.

[5] People v. Alfredo, G.R. No. 188560, December 15, 2010.

[6] People v. Saludo, G.R. No. 178406, April 6, 2011 citing People vs. Bayani and People vs. Fraga.

[7] People v. Delovino, G.R. Nos. 116132-33, August 23, 1995.

[8] People v. Docena, G.R. Nos. 131894-98, January 20, 2000.

[9] People v. Sabadlab, G.R. No. 175924, March 14, 2012.

[10] People v. Esperida, G.R. Nos. 139637-38, January 22, 2003.

[11] Lim v. San and Lo, G.R. No. 159723, September 9, 2004.

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