

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUANITO GALICIA, ACCUSED-APPELLANT.

G.R. No. L-39235. July 25, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This case had its incipience in a criminal complaint filed by Emma Catoto charging Pablo Impasto and Juanito Galicia with the crime of rape. Both accused entered a plea of not guilty; however, after the prosecution had submitted its evidence, Pablo Impasto was allowed to change his original plea of not guilty to that of guilty, and was sentenced accordingly.

Trial proceeded against Juanito Galicia and on March 19, 1974 the lower court rendered a judgment of conviction, the decretal portion of which reads as follows:

"WHEREFORE, finding the accused Juanito Galicia guilty beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended by Rep. Act No. 2642 and 4111, hereby sentences the accused Juanito Galicia to suffer the penalty of reclusion perpetua; to indemnify Emma Catoto in the sum of P4,000.00, to support the offspring, if any, and to pay one-half [1/2] of the costs."

On April 15, 1974, appellant Galicia filed a motion for reconsideration, adducing in support thereof an affidavit of retraction executed by the complaining witness. The motion was denied for lack of merit.

Relying on the aforesaid affidavit of retraction and the alleged insufficiency of the People's evidence, appellant seeks to set aside the sentence imposed upon him.

The testimony of the complaining witness Emma Catoto, 13 years of age at the time of the incident, established the following facts:

In the evening of April 10, 1973, Emma and her younger brothers and sister, namely: Rene Catoto, 7, Eva Lilia, 3, and Roberto Lilia, 1, were asleep in their house at Bo. Impalidan, Calinog, Iloilo. Rene was at the sala and Roberto, Eva and complainant were inside the room. Their parents Rosela Lilia and Luis Lilia, the latter being the complainant's stepfather, were not home, having left early that morning to cut sugarcane in the land of one Ernesto Carbolito in Bo. Malitbog.

At about 10:00 that night, Emma was awakened by the call of someone outside. Recognizing the voice to be that of Pablo Impasta, a neighbor and the godfather of her infant brother Roberto Lilia, Emma asked Pablo what he wanted. The latter answered that they be allowed to enter the house for a short while. As Pablo was a frequent caller at their house, complainant opened the door and let in into the sala Pablo and his companion, appellant Juanito Galicia, a married man, whose house was about 100 meters away. The sala was lighted by a kerosene lamp on top of a table. Emma inquired what they wanted, and when she heard no answer, she returned to the room to rock the hammock of her infant brother Roberto who had started to cry. Pablo followed her to the room. He suddenly pointed a knife [pinuti] at her and threatened to kill her should she shout. Then he pulled off her panty

and unzipped her trousers. He brought out his organ which he inserted into her vagina. She felt intense pain. Thereafter, appellant Galicia, who had posted himself at the door, approached her. Threatening her with a butcher knife, he too succeeded in having sexual intercourse against her will.

Before the two accused left the house, they warned her that they would kill her if she reported the incident to her mother. These threats notwithstanding, Emma reported the crime to her parents immediately upon their arrival the following afternoon. The next day, April 22, 1973, Emma was brought to the Calinog Emergency Hospital where she was examined by Dr. Maria Merma Gustilo. The latter's findings are set forth in the medical certificate, Exh. 'A' as follows:

- "1. Linear abrasion with contusion, left buttock;
2. Perineum reddish in appearance;
3. Vagina admits two [2] fingers easily;
4. Hymen lacerated at 4:00 o'clock, 7:00 o'clock and 9:00 o'clock position;
5. Presence of whitish viscid discharge near os;
6. Vagina and cervical smear negative for sperm cells."

For his part, appellant Galicia denied having had sexual intercourse with complainant. Setting up the defense of alibi, he declared that as a rural policeman of Bo. Impalidan, he was appointed by the barrio captain as leader of Ronda No. 2, the members of which were Eleuterio Lingaya, Fred Galicia, Rovertio Galicia and Luis Lilia, the stepfather of the complainant; that he reported at 8:00 that evening at Ronda Post No. 2, located about fifty [50] meters from the house of the complainant; that thereupon he and the members of Ronda No. 2, including complainant's stepfather Luis Lilia, commenced their patrol; that when they passed the house of Luis Lilia, the latter told his wife Rosela to put out the light; that on their way back he noticed that the house of Luis Lilia was already dark; that at 9:00 that evening they arrived at their station after having completed their round; that shortly after, he and the barrio captain, Manuel Casa, inspected the other rondas; that he returned at Post No. 2 at about 11:30 and remained thereat until he went home at 5:00 in the morning of the following day.

We are not impressed by the appellant's alibi. It is a defense too easy to fabricate. Besides, his alibi does not preclude the possibility that he was present at the scene of the crime when it was committed. He never left Barrio Impalidan in the night in question and, by his own admission, Ronda Post No. 2 was only about 50 meters away from the complainant's house. In a long line of decisions, We have repeatedly emphasized that for the defense of alibi to prosper, it is not enough that the accused was somewhere else, but he must likewise demonstrate that it was physically impossible for him to have been present at the scene of the crime at the time of its commission.[1]

Complainant had positively identified appellant as one of her assailants; and she could not have been mistaken in her identification. She had known appellant for a long period of time before the incident. She identified him as a married man whose house was located barely 100 meters away from her house. He was the same man who entered her house with Pablo Impasta, and she recognized them by the light of the kerosene lamp at the sala.

The fact that only the complainant had given an eye-witness account of the incident in question is of no moment, for the uncorroborated testimony of the offended party in an accusation for rape, if credible and positive, and satisfies the court beyond reasonable doubt, is sufficient to justify conviction.[2]

The trial judge characterized complainant's testimony as "straightforward" and "clear and convincing". As early as 1927, Justice Malcolm, in the case of *People vs. De Otero*[3] had set the rule consistently observed by this Court in passing upon the factual findings of trial courts. Thus, "After everything is said and done, We come back, as

We invariably do in cases of this nature, to a recognition of the rule that the Supreme Court will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence, which has been misinterpreted." We have painstakingly scrutinized the records of this case, and We find no reasonable ground to disturb the findings of the lower court.

Appellant would contend that complainant was ill-motivated in testifying against him. He cites, in support thereof, the alleged feud existing between him and the offended party's stepfather, Luis Lilia. Reliance on such alleged feud hardly deserves serious consideration. As noted by the court a quo "there is no evidence introduced by the defense that the complaining witness was under the influence of Luis Lilia, before, during and after the incident." What is more, the alleged conflict between the appellant and the complainant's stepfather had already been amicably settled by the barrio captain.[4] In fact, it was because of their renewed cordial relations that the barrio captain had assigned Luis Lilia to Ronda No. 2 of which appellant was the leader.

Nor can the lower court be faulted for brushing aside the affidavit of retraction executed by the complainant. As this Court held in *People vs. Ubiña*,[5] "it would be a dangerous rule for courts to reject testimonies solemnly taken before the courts of justice simply because the witnesses who had given them later on changed their mind for one reason or another, for such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of scrupulous witnesses." Affidavits of retraction can easily be secured from poor and ignorant witnesses usually for some monetary consideration.[6]

In the case at bar, the crime of rape was committed by the two [2] accused with the use of a deadly weapon. Under Article 335 of the Revised Penal Code, the imposable penalty is reclusion perpetua to death. In view of the attendance of the aggravating circumstance of dwelling - the crime having been committed in the dwelling of the offended party - the correct penalty to be imposed is death. However, for lack of the necessary votes, the Court imposes the sentence of reclusion perpetua.

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

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero and Abad Santos, JJ., concur.
De Castro, J., on sick leave.

[1] *People vs. Sarmiento*, 64 SCRA 350; *People vs. Alcantara*, 33 SCRA 812; *People vs. Jamero*, 24 SCRA 207.

[2] *People vs. Orzame*, 17 SCRA 161; *People vs. Argana*, 10 SCRA 311; *People vs. Dazo*, 58 Phil. 420; *People vs. Ariarte*, 60 Phil. 326; *People vs. Delfinado*, 61 Phil. 694; *People vs. Savellano*, 57 SCRA 320.

[3] 51 Phil. 201.

[4] TSN, pp. 17-18.

[5] 97 Phil. 515.

[6] *People vs. Monadi*, 97 Phil. 575; *People vs. Aguipo*, 104 Phil. 1051; *People vs. Francisco*, 94 Phil. 975; *People vs. Ulita*, 108 Phil. 730.

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