

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. DESIDERIO FRANCISQUITE, DEFENDANT AND APPELLANT.*G.R. NO. L-27980. April 30, 1974*

Ponente: ANTONIO, J.

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Appeal from the judgment of the Court of First Instance of Davao, Branch I, in Criminal Case No. 9462, finding appellant Desiderio Francisquite guilty of the crime of rape, and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the victim Julita Ciras in the amount of P5,000.00 as moral damages, to support the offspring if there will be any and to pay the costs.

At about 3:30 o'clock on the afternoon of June 20, 1965, complainant Junta Ciras, 16 years of age and single, was looking for transportation to bring her to her home at Inawayan, Roxas, Davao. Earlier in the week, she had gone to her elder brother's house in Sasa, Davao City, where her parents sent her to stay in order that she may enroll in a dressmaking school, but upon being informed that the enrolment was already closed, she decided to return to her home at Inawayan. While she was thus waiting at a place where jeepneys are parked in Sitio Acacia, Davao City, appellant Desiderio Francisquite, who was inside his jeepney parked across the street, saw her and called for her. Appellant inquired from Julita if she was going home to Inawayan, and when she replied in the affirmative, appellant immediately invited her to ride in his jeepney as he was also proceeding to that place. Since complainant knew appellant very well, she accepted his offer. She had every reason to trust appellant, the latter having been married to a neighbor of theirs at Inawayan and had been living in their neighborhood for the past three years and used to call on complainant's father for assistance in the repair of appellant jeep. After complainant boarded the jeepney appellant drove his vehicle from the corner of San Pedro and Claveria Streets to Magsaysay Park in Davao City, with complainant seated in the front seat between appellant and the latter's younger brother Daniel. Upon reaching Magsaysay Park, appellant alighted from the jeep and obtained three glasses of a beverage called gulaman from a street vendor. Appellant then gave one glass of "gulaman" to complainant, who, after drinking the same, felt dizzy and weak. In such a condition she remained in the jeepney while said vehicle cruised around the poblacion of Davao trying to pick up passengers. Complainant told appellant to stop the jeepney so she could alight and take instead a Delta Cruiser truck for Inawayan, but appellant refused. Appellant assured her, however, that they would immediately proceed to Inawayan at 4:00 o'clock that afternoon. However, it was already 8:00 o'clock in the evening when they left the poblacion after appellant had picked up one female and three male passengers who got off at the Sta. Clara Plywood compound in Toril. After the passengers had alighted, the appellant left his brother at a tuba store in Daliao, Davao City, and drove his jeepney towards a ramie plantation where several ipil-ipil trees were growing. Upon reaching an isolated and dark place, appellant stopped and alighted from his jeepney. Complainant, suspecting that appellant had evil intentions, pleaded with him to bring her home; but he ignored her and, instead, grabbed her arms and forcibly pulled her out of the vehicle. As complainant struggled, cried and shouted for help, appellant yanked her out of the jeepney in such a forcible manner that the head of the complainant bumped against the railing of the jeepney. She was dragged to a place behind the trees; the two struggled with each other, until appellant was able to force complainant to lie flat on the

ground, and thereupon appellant forcibly tore her panties, and succeeded in having carnal knowledge of her. After consummating the act, appellant released complainant from his tight embrace and brought her back to the jeepney. Complainant then asked appellant to take her home to Inawayan, but he refused, saying that complainant's father might maul him. Instead, appellant brought her to the house of his mother in Tambakan, Davao, where she was made to sleep. The following morning, June 21, 1965, at about 10:00 o'clock, appellant brought her to Inawayan, Davao. Numbed by a feeling of pervasive shame and apprehensive that she might be punished by her father, complainant did not report to her mother about the incident. Her mother, however, noticed that complainant was feeling weak and indisposed, hence her mother suggested that they go and see a doctor, but complainant refused, saying she could hardly walk as her body was weak and aching. She was, therefore, given a Cortal tablet.

On June 30, 1965, complainant's mother called for Eduardo Bereber, who was engaged to marry her daughter, to inform him about the latter's physical condition. When Bereber arrived at complainant's house and upon seeing complainant's condition, he revealed to the latter's distraught parents that appellant had told him that if he would marry complainant, he would have a second-hand wife, as he (appellant) was the first to have carnal knowledge of her. It was then that complainant related for the first time to her parents that she was criminally assaulted by appellant.

The following day (July 1, 1965) complainant, together with her parents and Eduardo, reported the incident to Barrio Captain Benjamin Bacay. According to complainant the barrio captain investigated appellant, Desiderio Francisquite, and in that investigation appellant admitted to the barrio captain that he raped Julita. The barrio captain then brought them to the Municipality of Roxas, but because the case occurred in the City of Davao, the Chief of Police of Roxas advised the parties to file the case in Davao City. That same day, complainant was examined by Dr. Bernardo Torres, Municipal Health Officer of Sta. Cruz, Davao, who found that complainant had a slight contusion at her right temporoparietal region and her "hymen completely obliterated" (sic). The foregoing facts are based on the testimony of Julita Ciras, Gerarda Ciras, and Dr. Bernardo Torres.

During the trial, appellant did not take the witness stand. Instead, he anchored his defense on the testimony of Jesus Valiente, Bienvenido Verano, and Daria Francisquite.

Jesus Valiente testified that at about 10:00 o'clock on the evening of June 20, 1965, while on his way home, coming from a dance hall at Toril, Davao City, and upon reaching Manuel Guardian Street, he saw from a distance of about 100 meters, at an isolated place, a parked jeepney from which alighted a man followed by a woman. He noticed that inside the jeepney was a puppy at the backseat of the vehicle and a paper bag on the front seat. As he continued to walk towards the jeepney he discovered that the paper bag which he saw earlier on the front seat was no longer there. Later, that same night, while buying cigarettes at a store in front of his house, he saw appellant alighting from his jeepney and buying cigarettes. A woman was allegedly with the appellant. Because the jeepney from which appellant alighted looked the same as the vehicle he saw parked earlier at the isolated place, he was certain that it was appellant whom he had seen leaving the jeep with a woman. He claims he had known appellant since 1960 and that appellant's father is very close friend of his.

Bienvenido Verano testified that he was a laborer employed by the mother of the appellant and had been driving the jeepney of appellant for about six months as a helper and, in fact, learned to drive by practicing on appellant's jeepney; that at about 10:30 o'clock on the evening of June 20, 1965, while passing through Manuel Guardian Street, he noticed appellant's jeepney parked on the right side of the road but the backseat of the jeepney was missing. Later that same night, while he was in the house of the mother of appellant in Tambakan, he saw the appellant and complainant. The complainant was wearing a yellow blouse and a green skirt, but he did not notice anything unusual about her dress. He further declared that complainant slept with appellant's mother while the appellant slept with him and the other laborers in another house belonging to appellant's mother.

Daria Francisquite, mother of appellant, testified that on the night of June 20, 1965, while she was sleeping in her house at Tambakan, she was awakened at 10:00 p.m. by appellant who told her he had a visitor with him. The visitor turned out to be the complainant. She claims that she was not able to talk to the complainant because she was busy breast-feeding her baby. She told her son to sleep in one of her houses with the laborers while complainant could sleep in her bed. The two left her house at 7:00 a.m. the following day. On cross-examination she admitted that prior to June 20, 1965, she had known complainant for at least three years, being her son's neighbor at Inawayan.

It is evident, therefore, that appellant does not deny the fact that he had sexual intercourse with complainant on the date and at the place in question. It is, however, the theory of the defense that complainant submitted herself voluntarily towards the consummation of the carnal act.

No evidence was offered, however, to show that the appellant and the offended party were lovers or otherwise emotionally attached to each other. In fact, according to the complainant's un rebutted testimony, appellant was not even courting her. It was neither shown nor even insinuated that the offended party was a woman of ill-repute or loose morals. Considering therefore the absence of any previous intimate relationship between the parties, the circumstance that the offended party is not only of tender age, but is presumptively decent and of good repute, and the fact that their meeting on that date was purely accidental, it is highly improbable that under such circumstances she would have laid open her honor to public ridicule and contempt by submitting herself to appellant in the consummation of the carnal act. As this Court observed in previous cases, it is difficult to believe that a young and unmarried woman would tell a story of defloration, allow the examination of her private parts, and thereafter permit herself to be the subject of public trial, unless she was not motivated by an honest desire to have the culprit apprehended and punished.[1] Besides, the evidence presented in support of this theory of appellant is undeserving of credence and belief. It is quite unusual that these two witnesses of appellant allegedly coming from different places, would see at almost the same time the same ordinary occurrence at Manuel Guardian Street of said city of a parked jeepney with a man and a woman alighting therefrom and recall in the same order the details thereof such as the presence of a puppy inside the jeepney and the absence of a back seat in the vehicle. Rational belief is subjected to an enormous strain when one is asked to accept such a story, coming as it does from witnesses who are admittedly close friends or employees of appellant's family. Considering that witnesses react differently to what they observe depending upon their situation and state of mind, the uniformity in the narration of details by these two witnesses relating to the incident weakens rather than strengthens their credibility.

Certainly, if it were true, as contended by appellant, that the offended party was neither drugged nor forced and that she voluntarily agreed with him in the consummation of the carnal act, it would have been the easiest thing for appellant to have testified and explained the circumstances under which the offended party submitted herself to him. It is true that the neglect or refusal of a defendant in a criminal case to be a witness cannot in any manner be used against him, as it is incumbent upon the prosecution to prove all the essential facts constituting the crime upon which punishment or conviction is based. But in this case where the accused admits having had sexual intercourse with the offended party, and claims that no force was used but stringent proof of circumstances is produced tending to support the charge that force was used, and it is apparent that the accused is so situated that he could produce evidence of all the facts and circumstances to overcome the evidence of the prosecution, but fails without justifiable cause to offer such proof, the natural conclusion is that such proof, if produced, instead of rebutting, would tend to sustain the charge.[2] It is not, therefore, the failure of the appellant to testify from which this unfavorable inference can be drawn, but from his inability to produce said proof in explanation of the incriminatory facts established by the prosecution.

Appellant, however, impugns the offended party's credibility in view of what he terms as "material contradictions, inconsistencies and incredibilities" in her testimony. There is, for instance, the purported variance between her affidavit of July 6, 1965 (Exhibit 1) and her testimony in court on November 16, 1966 on the place where the offended party was made to drink the gulaman mixture or the identity of the person who gave her the glass of gulaman mixture. The seeming inconsistency was sufficiently explained by the offended party. Testifying on cross-examination, she stated that her error may stem from the fact that she was not well acquainted with the streets of Davao, and that the truth is that it was appellant Desiderio Francisquite who bought and handed to her the gulaman mixture. Appellant also contends that it is incredible that the offended party, having become "unconscious" after drinking the gulaman mixture and "regained full consciousness" on the following morning when she arrived at her house at Inawayan, could observe and remember every detail of the incident even during the time that she was "unconscious." But it must be noted that in the affidavit of the offended party of July 6, 1965 she stated that moments after taking the gulaman mixture, she became dizzy and at the same time felt herself very weak, while in court she stated that after drinking the gulaman mixture she "became unconscious." It is evident that the use of said word was an error committed by the court interpreter, since both the affidavit and the testimony of the offended party in court sufficiently show that she was aware of what was happening even after she became dizzy and weak as a result of said drink. Finally, appellant contends that the subsequent conduct of the offended party – in spending the night in the house of the mother of the appellant and in failing to inform her own mother, Gerarda Ciras, immediately the following day when she reached her house, of the abuse perpetrated upon her by appellant – is inconsistent with the conduct of a woman who has been raped. Considering that the offended party was a stranger in that city, the lateness of the hour, and her weakened condition, it was quite understandable that she had no other recourse but to go along with the suggestion of the appellant to sleep at the house of the latter's mother. As to her failure in informing her own mother of the fact that she was forcibly ravished by appellant the previous night, the offended party explained that she was apprehensive-that she would be immediately punished by her father. Whether the offended party was justified in her apprehension is of no moment, considering at that time she must have been in a state of emotional shock. It is not to be expected that a young girl of 16 years of age, who has just undergone the traumatic and revolting experience of having been sexually abused by a married man, would have the coolness and mental serenity to think and act in a reasonable and logical manner. Under such circumstance, a woman thus overcome by a feeling of pervasive shame would hesitate to reveal such a ghastly experience, especially when such a revelation may seriously impair her relationship with her betrothed.

The crime committed by appellant Desiderio Francisquite as correctly found by the trial court is rape for which the law imposes the penalty of reclusion perpetua. Considering that there is no showing in the record that any offspring resulted from the aforecited intercourse, the appealed judgment must be modified by deleting therefrom that portion which orders appellant to support the offspring, should there be any.

WHEREFORE, with the modification referred to above, the appealed judgment is affirmed, with costs against appellant.

Zaldivar, (Chairman), Fernando, Fernandez, and Aquino, JJ., concur.
Barredo, J., took no part.

[1] *People vs. Selfaison*, 1 SCRA 235, 242; *People vs. Joaquin Gan*, G.R. No. L-33446, August 18, 1972, 46 SCRA 667, 675-76.

[2] *U.S. vs. Sarikala*, 37 Phil. 486; *People vs. Romualdez and Mabunay*, 57 Phil. 148-181.

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