

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PIO JAPITANA JR., ACCUSED-APPELLANT.*G.R. No. L-34232. May 25, 1990*

Ponente: CRUZ, J.

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Curiously, this is a case of life imitating fiction. The story of the rascal son of the hacendero forcing his attentions on the helpless maidservant is an oft-told drama that has become virtually part of our folklore and a favorite staple of our local movies. The trial court has found that the facts conformed substantially to the familiar plot and pronounced the accused-appellant guilty. But Pio Japitana, Jr. has a different tale to tell.

The accused-appellant was at the time of the alleged offense 26 years old and the overseer in his father's hacienda. Although the son of a lawyer (who served as his defense counsel), he finished only Grade VI, after having been enrolled by his parents in a succession of no less than six schools in Bacolod and Manila. He was also facing charges on the fiscal's office of having killed a man, but the record does not disclose more about the case.

The complainant is Nenita Abaring, a 21-year old employee in the Japitana poultry farm and residing in the hacendero's compound. Her sister Jovita works with her as a domestic and together with the other female help sleep in the house of their employers. Their parents are distantly related to the Japitanas and also work for the latter in their hacienda.

Japitana was charged with having raped Abaring on May 16, 1970, in Bacolod City. The offense was allegedly committed in a small bodega or stockroom in the Japitana compound at about ten o'clock in the morning of that date. As found by the trial court, Nenita was inside the stockroom when Pio entered and suddenly headlocked her with his left arm while covering her mouth with his right hand to prevent her from crying out. The girl's reaction was to resist, and the two fell on the cement floor, where they continued grappling, Pio all the while urging her to give in and assuring her that he would marry her. Nenita scratched his face and he bit her hand. As they struggled, Nenita kicked him in the neck and Pio pulled off her shorts and panty, tearing both of them. He shed off his trousers. Nenita screamed as he tried to pry her thighs apart and, finally succeeding as the girl's resistance weakened, plunged his bludgeon into her maidenhead. Nenita kept writhing in pain and helpless outrage as he repeatedly intruded his manhood, and it was while they were so joined that they were discovered by Jovita and another helper, Gloria Baron, who had heard Nenita's screams and come to investigate. Pio put on his trousers. Finding what he had done to her sister, Jovita chased him with a piece of wood. Nenita, for her part, rushed out crying to Pio's mother, to whom she tearfully complained. The mother said: "He is such a naughty boy. He is stupid and he is out of his mind. It is good that he will be sent to jail so that he will regret his foolishness." [1] Pio, Sr. arrived at the house while Nenita was already calling the police and upon being informed of what had happened said: "It is good if you will accuse him so that he will be punished for his foolishness. He would be given a retribution for his misdeeds." [2]

The police came to investigate and retrieved Nenita's shorts and panty on the floor of the bodega. Nenita was later

taken to the police station, where she formally filed her complaint and was examined by Dr. Teodoro S. Lavada, medico-legal officer of the Bacolod Police Department.

The defense had an entirely different version of the incident, with Nenita as a femme fatale and Pio as a pliant victim who had succumbed to her temptation. In the morning in question, according to him, he had just entered the stockroom after briefly talking to three persons who were working outside when Nenita followed him, closing the door behind her. Without much ado, she took him in her arms and started fondling his penis. Reacting, he caressed her crotch and sought to remove her shorts but found that the zipper was broken. She moved his hand aside and took them off herself, along with her panty, and with her right arm around his neck, drew him down on the cement floor with her. Lying on his left side with his right leg upon her right leg, he then inserted his right index and middle fingers in her vagina, moving them in simulation of coition as she writhed in ecstasy for five to ten minutes. He said he could not unzip his tight-fitting pants and as his groin was pressing upon his shorts he had an orgasm. It was at this point that Gloria suddenly appeared at the window and shouted, "Hey, what are you doing there?"

Pio described Nenita as a woman of loose morals who had insinuated herself on him, often calling him handsome and brushing her breasts against him. She also flirted with the male helpers. He made much of the open window in the stockroom through which he said she could have escaped if she really wanted to. He also stressed that he would not have attempted to rape her at that time because of the three workers outside who were only four meters away and could have heard her screams.

Among these workers was Romeo Apitana, who testified that he was indeed outside with the two other workers at the time in question and saw Nenita follow Pio into the stockroom. He said what they were doing inside was none of his business. He added that Nenita came out later after Jovita and Gloria had opened the door, and she was screaming and in tears; later in the house, she shouted, "You fool, you will have your day!"[3]

Examining himself on the stand, Atty. Pio Japitana, Sr. testified that he was in his office at the time in question but did not hear Nenita screaming although the stockroom was only fifteen meters away. When he questioned Nenita that morning, she said his son did not have sexual intercourse with her but merely inserted his fingers in her vagina. This witness also declared that what he said that morning was that he would investigate the matter and if the charges were true, his son "must suffer the consequences." Of particular interest was his assertion that someone in the police department who claimed he was close to Dr. Lavada but did not identify himself called him up and suggested that the medical report could be "doctored" for a consideration. He said he indignantly rejected the offer.

There are also charges and counter-charges of overtures for the settlement of the case, but these are at best peripheral issues. What matters is the really relevant evidence submitted by the parties which the Court has carefully considered and evaluated. On the basis thereof, we are convinced that the lower court committed no reversible error in its excellent decision, which is a model of clarity and perceptiveness.

We have repeatedly stressed that, absent any indication to the contrary, this Court will accord the highest respect to the findings of the trial judge, who had the opportunity to watch the witnesses on the stand and to determine by their deportment if they were speaking the truth or lying in their teeth. Finding no such indications here, we agree with the observations of then Judge Oscar R. Victoriano (later Presiding Justice of the Court of Appeals) that ?

Subjected to diligent and painstaking scrutiny, the testimony of the offended girl, given in a straightforward manner, neither wavering nor fumbling, unimpaired by material discrepancies and contradictions and shown to be consistent with ordinary human experience, undoubtedly bears the imprint of truth and therefore must be accepted.[4]

It is not difficult to believe that Pio could have easily overpowered Nenita, given his physical build, not to mention his moral influence as the son of his victim's employer. It was also perfectly natural for Nenita to rush out of the stockroom after her violation and to complain to the mother, not the father, of the man who had raped her. Women share their problems with each other. It is no less noteworthy that Nenita acted decisively after the outrage, reporting it immediately to Mrs. Japitana and then to the police, 'to the extent of even forgetting to put on her shorts and panty, which the police found later in the bodega. Indeed, when she was examined that same afternoon by Dr. Lavada, she was still stinking from the chicken mash that stuck to her body and hair while she was wrestling with Pio on the cement floor of the stockroom.

But the most telling proof that Nenita was not lying is the medical report,[5] which confirmed practically every detail of her defloration as she narrated it. The said report is reproduced in full hereunder:

Physical findings as follows:

Fairly developed and fairly nourished walking patient.

Head: Normal Eyes: Rt: Normal

Left: Normal

Ears: Rt: Normal Left: Normal

Mouth: Normal

Neck: Normal

Chest: Symmetrical in shape with hemispherical mammary glands, with protruding nipples, with pinkish brown areola. Fairly developed.

Abdominal exam: Symmetrical in shape. Nothing palpable.

Genital examination: Pubic hairs fully developed. Labia majora and minora slightly gaping, with abrasion at the upper angle. Vaginal opening admits readily one finger, 2 fingers with difficulty. Vaginal canal with abrasion and reddening. Hymen with new laceration at 1, 4, 7, 9, and 11 o'clock and old laceration at 12 o'clock. Slight bleeding at 1, 5 and 9 o'clock, lacerations.

Microscopical examination: Cervical smear shows positive sperms (dead).

Physical injuries: 1) Contusion with abrasion, mucosa, lower lip, left.

2) Abrasion linear, 2 in number at lateral aspect, neck, right.

3) Punctuated superficial lacerated wounds, at the posterior aspect, index, middle and ring finger, hand, right.

4) Abrasion, knee, left.

Duration: 5-7 days if properly treated and if without due complications.

The trial court noted:

Before the certificate was issued, Dr. Lavada observed the complainant to be pale and nervous. Her dress was dirty and her hair dishevelled with some sandy substance smelling of poultry feed on her hair and body. He stated that the contusion on the left lower lip on the mucosa (lower lip, left) could have been caused by a fall, and the abrasion thereon could be due to friction against a rough surface such as a struggle on a cement surface. The two (2) linear abrasions at the lateral aspect of the right neck could have been due to a pointed object like finger nails, while the punctuated superficial lacerated wounds at the posterior aspect of the index,

middle and ring fingers of the right hand could have been caused by sharp objects like teeth bite. He attributed the abrasion at the upper angle of the labia majora and minora which were slightly gaping to friction against a rough surface. The abrasion with reddening of the vaginal canal could have been caused by a hard elongated object such as an erect penis in sexual intercourse. He concluded that on the basis of the lacerations on the hymen, abrasion and reddening of the vaginal canal and the result of the microscopic examination which was positive for sperms the offended party was exposed to recent sexual penetration with ejaculation at least within twelve (12) hours from the time of the examination; that based on the genital findings showing lack of proper stimulation and lubrication of the vaginal canal the offended party was not sufficiently prepared for intercourse and that in relation to the other physical findings she offered resistance to the sexual act.

Elaborating on the character of the sexual intercourse in question, Dr. Lavada declared:

Q Could you inform this Honorable Court the difference if any of the genital organ of a woman who had just sexual intercourse through force and violence and that with a woman who had just sexual intercourse with her consent if there is any difference?

A A woman who had sexual intercourse through force or violence there is no romance, sensation, no petting, no orgasm, no stimulation; whereas, a woman doing this with consent of course they perform the act there is the so-called preliminaries, romance, which would produce secretions along the vaginal canal which would diminish the friction, therefore, there is the presence of liquid and diminish the injury on the vaginal canal; the labia majora are not so damaged.

Q After examining Nenita Abaring and with your findings particularly on the genital examination, what is your opinion on the character of the sexual intercourse she had.

A I would say that the woman at that time was not properly prepared; there was no lubrication; no secretion.

Q In other words doctor, would you say that there was no consent on the part of the woman considering your findings?

A All I could say that woman is not prepared. That is all.[6]

By contrast, the evidence of the defense, particularly the testimony of the accused-appellant himself, is on the whole undeserving of credence. Indeed, it looks to be pure concoction except possibly for the protestations of Atty. Japitana that he did not hear Nenita's screams from his office and that he did not immediately condemn his son. But even if it be conceded that he was really unaware of the girl's cries for help, the fact is that they were heard by Gloria Baron when she went out into the balcony to tell Atty. Japitana that there was a telephone call for him. Otherwise, it would not have occurred to her to go to the stockroom where the screams were coming from.

The testimony of Romeo Japitana that he and two other workers were near the stockroom when Nenita followed Pio inside is not acceptable. Surely, Nenita would not have entered the stockroom, and with seduction in mind, when there were people nearby who would be wondering what she and Pio were doing inside. Moreover, his motives would not be free from suspicion, considering that he was a first cousin of Pio, Jr. and an employee of Pio, Sr. As to his suggestion that there was a window in the stockroom through which Nenita could have escaped, the girl had a quite logical answer. Besides the fact that there were feed boxes that obstructed access to the window, there was the insistent Pio himself who was determined to prevent her from leaving so he could rape her.

Atty. Japitana's assertion that somebody tried to extort money from him in exchange for a medical examination report favorable to his son was just that - a mere assertion. No evidence was adduced to support it. As a lawyer, he should have known better than to make irresponsible accusations like that, especially against an accredited medico-legal officer of the government with recognized credentials. If he had really received such an offer, what he should have done was call for an investigation to ferret out the guilty party. He knew that was his duty as an

officer of the court but, by his own admission, he did nothing.

He made another strange suggestion during the cross-examination of Nenita, when he asked the following question and received an answer he did not see fit to pursue, thus:

Q During the course of time that Dr. Lavada was examining your private part, did you ever notice whether he undressed during his examination?

A Why should he undress himself?[7]

But apparently not daunted by that reaction, he later made following accusation in the accused-appellant's brief:

The fact that the complainant was examined twice can it be possible, that in the first examination, she was used by Dr. Lavada, which attributed in the presence of the sperms in her private part?

This is not only a desperate ploy: this is an uncalled for and vicious imputation. While the Court understands the special zeal Atty. Pio Japitana, Sr. had to exert in defense of his son, such anxiety did not give him a license to make malicious charges based only on speculation and not solid evidence.

But more than anything else, it is the testimony of the accused-appellant himself that has condemned him as a rapist and a liar. His defense is a futile fabrication. By his own account, this 26-year old man said he used only his fingers to gratify Nenita's desire when he could easily have mounted the girl who was ready and aching to be taken. Considering that sperm was found in Nenita's vagina, the accused-appellant is in effect declaring under oath - that by some sexual miracle, it was his fingers that ejaculated. Here was a woman burning with desire and waiting to be transported by his manhood, and her virile and young lover could only offer her his fingers, unable to impale her with his phallus because his pants were tight.

There are limits to one's credibility and they have been clearly exceeded in this case. Pio is plainly unbelievable even as a teller of tales, much less as a defendant fighting for his liberty and honor. Pio's testimony is an affront to truth and our intelligence; the Court is not as naive as the defense would hope it to be, nor is it that gullible.

It is hard to understand the purpose of the defense in showing that the accused-appellant had studied in all of six schools but reached only Grade VI. If it was to prove moral character, then the evidence has failed to help him; if at all, it has suggested a weakness in his character that lends more credence to the cause of the prosecution.

The alleged inconsistencies in the testimony of the complaining witness are merely minor lapses that do not impair the essential veracity of her narration. To argue that she could have made a more spirited resistance, as by using the bottles in the stockroom to defend herself, is to assume that she had full freedom of movement when in fact she had been seized by her neck, thrown to the floor where, despite her efforts to free herself, she was finally overpowered and defiled. As for the other arguments of the defense, the same are not convincing enough or substantial enough to tilt the balance in favor of the accused-appellant.

Our conclusion, like that of the trial court, is that there is enough evidence against the accused-appellant to overcome the constitutional presumption of innocence in his favor. We have absolutely no doubt that in the morning of May 16, 1970, Pio Japitana, Jr. forced Nenita Abaring to submit to his will and despite her vigorous defense of her chastity, ruthlessly bloodied her in a frenzy of animal lust that deprived her of a virginity it was not his right to pierce.

WHEREFORE, the challenged decision finding the accused-appellant guilty of rape and sentencing him to reclusion perpetua is **AFFIRMED** except that the award of moral damages is increased to P30,000.00. Considering the length of time this case has been pending, the Court specifically orders that the records thereof be remanded to the court a quo for immediate execution of this judgment once it becomes final and executory and is

entered in due course. Costs against the accused-appellant.

SO ORDERED.

Narvasa (Chairman), and Medialdea, JJ., concur.
Gancayco and Griño-Aquino, JJ., on leave.

[1] TSN, November 17, 1970, p. 14.

[2] Ibid. p. 15.

[3] TSN, February 2, 1971, p. 225.

[4] Rollo, p. 32.

[5] Records, p. 78; Exhibit "A."

[6] TSN, September 21, 1970, pp. 14, 15.

[7] TSN, December 1, 1970, p. 78.

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