

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GILBERT PIZARRO, ACCUSED-APPELLANT.

G.R. No. L-49282. July 06, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

RAPE, punished by reclusion perpetua, is having carnal knowledge of a woman by force or intimidation, or when she is deprived of reason or otherwise unconscious, or when she is under 12 years of age.[1]

The court a quo found Gilbert Pizarro guilty of rape by force and sentenced him accordingly.[2] He is now before Us on appeal. Is he guilty?

Gilbert Pizarro is charged with having carnal knowledge of Janet Arimboanga in the afternoon of May 22, 1975, in her house at Bo. San Isidro, San Marcelino, Zambales, against her will. She was then 17 while Gilbert was 19.

The story of Janet: A month after she and Gilbert met, he started to write her love letters. On October 27, 1974, after his third letter, she accepted him.[3] But their relationship was destined to be short-lived. In February 1975, she discovered that he had other girlfriends.[4] Since then their love affair floundered. Nonetheless, she invited him to her graduation on March 20, 1975,[5] and both were even in the bridal entourage in the wedding of her brother on April 6, 1975. On that occasion, he asked her if he could see her the following day at the Victory Liner station at San Fernando, Pampanga, on her way home to Zambales. She agreed. Accordingly, they met at their rendezvous and there she told him she was no longer going home as her grandfather died and requested Gilbert instead to tell her parents about it.[6] On April 22, 1975, she finally broke off with him.[7]

On May 22, 1975, at about 4:00 o'clock in the afternoon, Gilbert visited her at her residence. As usual, she received him at the living room.[8] She was then wearing a t-shirt, a skirt and underneath, a bikini. While they were conversing, her maid asked permission to leave to visit a relative. However, without waiting for her nod, the maid left.[9]

Gilbert asked for a glass of water. She went to the kitchen to get water. He followed her. He drank. Suddenly, he grabbed her and dragged her to the comfort room. Once inside, he closed the door and pinned her down the floor.[10] He held her two hands with his right as he pressed his face against her right shoulder. With his left hand, he pushed her panty downward, and after succeeding in lowering it a bit, he pushed it farther down with his right foot, tearing the left portion in the process.[11] With her panty removed, and placing his legs between hers, he unzipped his pants and pulled them downward.[12] She resisted but could not prevail as he was heavy and strong. Then the inevitable had to happen. She felt the sceptre of his passion intrude her strictly private domain. She cried.[13] After the sexual congress, which lasted for some twenty-five minutes and while still in the venue of their affaire d' amour, they heard someone arrive. It was her father.[14]

When her father was already in the sala, Janet tiptoed out of the comfort room passing through the kitchen, went to her father, kissed his hand, and then sat with him on the sofa. Minutes later, Gilbert also came out from where

he was holed in and proceeded to the living room to greet her father. He was surprised to see Gilbert who then asked permission from him to leave.[15]

After Gilbert left, Janet's father went to the comfort room. While inside, he stepped on something slippery with an "obnoxious" smell of sperm. He became suspicious. He then called his daughter for explanation. But before Janet could say anything, her mother arrived. Janet embraced her and cried on her shoulders. Her mother then led her to the living room to shield her from the wrath of her father who was already infuriated.[16] Janet then told her mother what Gilbert did to her. When her mother related the story to her father, he rushed to Janet upstairs, intent to beat her, but was held back on the waist by her mother.[17]

Feeling outraged, both parents went immediately to the mayor of their town and informed him of the incident between Gilbert and Janet. They did not mention to him however that their daughter was raped.[18]

That same evening, upon initiative of the mayor, the parents of Gilbert went to see Janet's parents at their residence and proposed marriage. But Janet was unwilling because she said Gilbert had many women in his life.

The following morning Janet was examined by Dr. Rosalina De Vera-Abalos who found her buttocks with contusion, left sacroiliac region, and on her hymen, the presence of fresh laceration at 3:00 o'clock and 7:00 o'clock position.[19]

Gilbert has another version: Janet was his girlfriend since October 1974 up to the time they made love on May 22, 1975. To prove their relationship, he produced a telegram[20] sent to him by Janet on March 18, 1975, asking him to go home to Zambales on March 20, 1975, as he was "badly needed". No explanation was given why he had to be home. He also presented seven (7) handwritten love letters sent to him by Janet.[21] He would visit her in her house, especially when she was alone, and she would likewise visit him when alone in his house.

He confesses to the sexual interlude on May 22, 1975, but skirts criminal responsibility by stressing that it was freely a consensual act with Janet, as in fact it was their fifth. The first was in his house in the afternoon of March 22, 1975, on her graduation day. Their second was on April 6, 1975. The third was also that same April 1975. The fourth was in the second week of May 1975 in the comfort room of their house.

On May 22, 1975, he again visited her in her house. She received him in the living room where they sat on the sofa. Soon after, her maid asked permission to leave to visit a relative. Since nobody else was left in the house, they indulged in kissing and other sensual caresses. When he felt that she was already aroused, he led her to the comfort room while they continued kissing. He then pulled her short pants and panty down and had intercourse with her in a standing position, and both of them enjoyed it.

Then Janet's father arrived. He proceeded to the living room while they were still in the comfort room. Quite apprehensive, he (Gilbert) then instructed Janet to open the door to the kitchen before proceeding to the living room so that it would appear that both of them came from outside. She did as she was told, while he stayed behind inside the comfort room.

As her father wanted to use the comfort room, Janet informed him that Gilbert was inside, so her father returned to the living room and continued to watch television. Later, Janet called Gilbert to come out, and he proceeded to the living room to greet her father.

From this narration of facts, the trial court chose to sustain the version of the prosecution and ruled that the accused was guilty of rape with use of force.

We do not agree. We view it differently. For, We are convinced, more than ever, that the act charged was the consequence of the mutual desire of the parties to have and to hold one another during those fleeting moments of

indiscretion. Our reasons for thus concluding -

First. Janet and Gilbert were sweethearts from October 1974. Although she claims that their love affair started to wilt in February 1975, until they broke off in April 1975, Gilbert insists that they were still lovers when they indulged in sex on May 22, 1975. To prove his assertion, she even invited him to her graduation on March 20, 1975, and both were even in the bridal entourage in the wedding of her brother on April 6, 1975. Then they even had a tryst at the Victory Liner station at San Fernando, Pampanga, on April 11, 1975, where she told him she was no longer proceeding home as her grandfather died. She even asked him to convey the message to her parents. These circumstances create serious doubt on whether Janet and Gilbert had broken off prior to May 22, 1975.

Second. The version of Janet appears unnatural and contrary to reason and human experience. If indeed she was no longer romantically involved with him, why did she not stop her housemaid from leaving her alone with him in the sala that afternoon of May 22, 1975, when she asked permission from her to visit a relative? Instead of making sure that she had companion in the house, aside from Gilbert, she allowed her maid to leave when she did not object. No conclusion can be drawn from the seeming acquiescence of Janet than that she welcomed the opportunity to be alone with him.

Third. Her pretended resistance is hardly credible. Even assuming that despite her resistance, she could not prevail because he was heavy and strong, there is no evidence whatsoever that she fought back, screamed in fear, threatened with physical harm, much less death, or cried out for help, not even after she sensed that someone entered the house. There is no evidence that she struggled fiercely to free herself from the clutches of appellant for, otherwise, both of them could have sustained bruises, or scratches at least, as a consequence of the struggle, if any there was. Janet could have emerged from her tight fix only with a dishevelled hair, ruffled clothes, a frightened look, or an emotional outburst. But there was none of these.

Fourth. When examined the following morning by Dr. Rosalina De Vera-Abalos, no physical or external injury was noted in her whole body except the contusion on her buttocks which, according to the doctor, could result when the sex mates are at the height of their emotional ecstasy during copulation.[22]

Fifth. The slight tear on her panty which she claimed was caused by the right foot of the accused pushing it down does not show unwarranted use of force to consummate the act against her will. The peculiar tear on the panty could have possibly resulted from her taking it off herself when excited, or in her haste to put it on again to pretend that nothing happened, as when her father arrived, to avoid detection.

Sixth. If it is true that Janet was sexually assaulted against her will, it is quite perplexing that despite her "harrowing" experience with Gilbert, she remained calm and composed when she met her father immediately after coming out of the comfort room.

Seventh. When the parents of Janet reported to the mayor of their town about what happened to their daughter, they did not tell the mayor that Janet was raped.

Eight. Janet was not consistent in her story as to who between her and Gilbert went out of the comfort room ahead. While she testified at the trial that she left ahead of Gilbert as she went to greet her father upon his arrival, in her testimony in the preliminary investigation conducted by the municipal court of San Marcelino, Zambales, she said that Gilbert went out ahead of her. This was her narration:

"Q. You cried in front of Gilbert Pizarro in the bathroom?

"A. Yes, sir.

"Q. Did you not say anything to Gilbert Pizarro.

"A. I just cried and I cannot (sic) speak a word.

"Q. Then, where did you go from the bathroom?

"A. After that, he went out and went to the sala, sir (*italics supplied*).

"Q. How about you?

"A. I stayed inside the bathroom (*italics supplied*).

"Q. Did you not come out from the bathroom?

"A. I went out.

"Q. When?

"A. When I sense (sic) that there is (sic) a person x x x I went out.[23]

From the foregoing, it appears that Gilbert left the comfort room ahead of her, and she only came out when she sensed that her father arrived. On the other hand, in her testimony before the trial court, she clearly narrated the fact that when her father arrived she went out of the comfort room to greet him by kissing his hand, but leaving behind Gilbert who came out only when her father was about to use the comfort room.

Generally, in prosecutions for rape, the only two parties who can testify as to the occurrence are the complainant and the accused. More often than not, their respective testimonies are diametrically contradictory as to what really happened. Thus, there have been evolved in this jurisdiction three settled principles to guide reviewing courts in passing upon the evidence in rape cases: (a) an accusation for rape can be made with facility, and it is difficult to prove it but more difficult for the person accused, though innocent to disprove; (b) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and, (c) the evidence for the prosecution must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the evidence for the defense.[24]

Thus, in rape cases where the testimony of complainant does not inspire credence and belief this Court has invariably reversed the judgment of conviction and acquitted the appellant.

In *People v. Teodosio*[25], where complainant's testimony appeared contradictory, We ruled:

"The contradictions in the testimony of Elaine where she attempted to prove that their coition was involuntary rather than fortify the case of the prosecution, served to demolish the same.

"Firstly, while Elaine claimed she was dragged to the hotel her medical examination did not reveal any contusions on her body showing use of any force on her. Indeed, if she was under any compulsion, she could easily have escaped during the many hours they were together going from one place to another, but she did not. She was enjoying their tryst.

x x x

"Thirdly, after the incident Elaine was composed and was not disturbed at all. She did not show any sign of having had a traumatic experience. It was only when her mother scolded her that she contrived the story.

"Fourthly, in one part of her *Sagot Salaysay* submitted to the fiscal's office, she said she did not accept the invitation of appellant for them to go to Luneta. In another part thereof she accepted the same. In court, she said she agreed to go to Luneta and thereafter she said she was forced.

x x x

"Verily, the foregoing circumstances effectively disprove the theory of force and involuntariness in the sexual interlude of the two.

"What is obvious and clear is that these two young lovers, carried by their mutual desire for each other, in a moment of recklessness, slept together and thus consummated the fruition of their brief love affair. Appellant cannot be held liable for rape as there was none committed. It was a consensual affair."

In *People v. Cui, Jr.*,^[26] where complainant's testimony appeared unsatisfactory and unconvincing, this Court held:

"In the case at bar, there are other facts of substance and value that militate against an affirmation of the finding of guilt against the accused. Although the complainant alleges that she was forced to submit to sexual intercourse, nowhere in the medical findings or in the complainant's testimony can it be found that there were marks of physical violence on her body, face or hands, like a wound, bruise or scratch, except for a contusion 2 x 3 cm. light bluish in color, located in the thigh, lateral aspect, middle third. According to complainant's own testimony, the contusion was caused by the accidental bumping of her thigh on the side of the bed, when the accused pushed her towards the side of the bed. But, to our mind, this is not the kind of force that will compel an unwilling woman to yield or submit to sexual intercourse with an unwelcomed lover.

x x x

"Nowhere in the complainant's testimony can it be found that she offered tenacious resistance to the alleged sexual assault. The only resistance which the complainant offered, as the Court sees it, was to push the accused. But had she really struggled hard to free herself from the hold of the accused, she would (have) sustained injuries or even scratches, and her pants and underwear might have been torn, especially because they, according to the complainant herself, were down up to above the knees only.

x x x

"Given the foregoing circumstances, the lingering doubt that the sexual intercourse between the complainant and the accused was not accomplished thru force, is further heightened. It is hardly credible for a young Filipina maiden, allegedly sexually assaulted, to regain her composure a few minutes after the 'rape' as to be conversing with a friend in the boats upper deck, as if nothing had happened to her virginity or chastity, and then, the day after the alleged sexual assault, to talk to the same man who supposedly ravished her, or no less than the subject of her 'dishonor'. Such conduct, to say the least, appears contrary to the expected natural reaction of any outraged woman, robbed of her honor. A woman who indeed was sexually assaulted would have shown a little more indignation, (if not fury) than what complainant did show here."

In *People v. Villapaña*,^[27] where complainant's sincerity and candor in her testimony were found not free from suspicion, We held:

"In the case at bar, numerous circumstances detract from the credibility of Macarañas' version of what happened on the night of April 6, 1976. Thus, the Court has no option but to declare that the prosecution has failed to meet the exacting test of moral certainty and proof of guilt of the accused beyond reasonable doubt. A reversal of the trial court's guilty verdict is inevitable.

"The conduct of complainant immediately before, during and subsequent to the alleged rape are not those which might reasonably be expected of the victim under the circumstances.

x x x

"The accused lives on the upper-floor of the same two-storey apartment where complainant lives. It appears from the evidence that accused went to bed after the sexual intercourse. It seems unlikely that if one did an act as bestial and dastardly as raping a woman, one would go to his room in the same building as the situs of the

crime, and not take precaution from possible reprisals. It seems all the more unnatural and unbelievable that a woman whose honor had just been outraged would do nothing to immediately bring the culprit to justice."

Considering the foregoing circumstances, We cannot help being drawn to the conclusion that complainant voluntarily entered the sex drama with gusto without being forced to do so, and that the prosecution for rape was merely the offshoot of the discovery by her father of the intimate relationship between her and the accused. What blew the lid off, to Our mind, was the accidental stepping by her father on something slippery that smelled to him like sperm, without which Gilbert would not have been brought to court.

Great weight and utmost respect are generally accorded to factual findings of the trial court. However, such findings are disregarded if there appears in the record some fact or circumstance of weight and influence which has been misinterpreted that, if considered, would affect the result of the case.[28]

Such is the case before Us. There are indeed circumstances which, as we have shown, completely overthrow the theory of the prosecution that the sexual act was done with use of force. At the very least, we entertain serious doubt on the criminal culpability of the accused; consequently, a reversal of the guilty verdict is warranted.

WHEREFORE, the judgment appealed from is REVERSED and another is hereby rendered ACQUITTING the accused GILBERT PIZARRO of the offense charged, with costs de officio.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

[1] Art. 335, Revised Penal Code, full text of which reads: "Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by reclusion perpetua.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death.

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death." (As amended by Rep. Act No. 2632, approved June 18, 1960, and Rep. Act No. 4111, approved June 20, 1964. Note however that the death penalty has been reduced to reclusion perpetua under Sec. 19 [1], Art. III, 1987 Constitution).

[2] Rollo, pp. 29-30. Accused was sentenced to reclusion perpetua with the accessory penalty provided by law, and to pay the offended party P5,000.00 for moral damages.

[3] Tsn, pp. 6-11, July 26, 1976.

[4] Ibid., p. 13.

[5] Exh. "5".

- [6] Tsn, pp. 47-49, September 1, 1976.
- [7] Ibid., p. 38.
- [8] Tsn, pp. 15-16, July 26, 1976.
- [9] Ibid., pp. 17-18.
- [10] Ibid., pp. 20-21.
- [11] Ibid, pp. 26-27; Exh. "B".
- [12] Ibid., p. 32.
- [13] Tsn, pp. 2-4, August 16, 1974.
- [14] Tsn, p. 15, September 22, 1976.
- [15] Tsn, pp. 6-7, October 25, 1976.
- [16] Tsn, pp. 9-11, November 17, 1976.
- [17] Ibid., pp. 18-19.
- [18] Tsn, p. 19, August 9, 1977.
- [19] Exh. "E".
- [20] Exh. "5".
- [21] Exhs. "6" to 12", inclusive.
- [22] Tsn, p. 25, September 1, 1976.
- [23] Tsn, p. 21, June 5, 1975, Proceedings of the preliminary investigation before the MTC of San Marcelino, Zambales, marked Exh. "2".
- [24] People v. Villapaña, G.R. No. 53984, May 5, 1988; 161 SCRA 72, citing People v. Quintal, No. L--49656, November 25, 1983; 125 SCRA 734.
- [25] G.R. No. 97496, June 3, 1991; 198 SCRA 121.
- [26] L-48084, June 20, 1988; 162 SCRA 220.
- [27] Supra.
- [28] San Sebastian College v. Court of Appeals, G.R. No. 84401, May 15, 1991, 197 SCRA 138.

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