

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENITO MARBEBE AND ALFONSO ESCALERA,
ACCUSED-DEFENDANTS, BENITO MARBEBE,
DEFENDANT-APPELLANT.**

G.R. No. L-35309. April 02, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the decision in Criminal Case No. 651 of the then Court of First Instance of Iloilo convicting accused Benito Marbebe of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua with the accessory penalties of the law, to indemnify the complainant Rebecca Origin in the sum of P12,000.00 as moral damages, to acknowledge and support the offspring that may be borne out of the act of said accused, and to pay the costs.

The facts as narrated by the Solicitor General in his brief, based on the testimonies of the People's witnesses, are as follows:

"That at about 7:45 in the evening of September 18, 1970 while she was standing in the corner of Mapa and Oñate Streets, Mandurriao, Iloilo City, waiting for a jeepney to take her to the University of Iloilo (p. 23, tsn., April 7, 1971), she was approached by the accused Benito Marbebe, then accompanied by the other accused Alfonso Escalera and Benito Marbebe then asked her to go with them to the Home Economics building in Mandurriao, Iloilo City, as he had something to talk with her (Ibid). She answered that if he had something to tell her, he could tell it on the following day as she was in a hurry to go to the University of Iloilo to get tickets for the night class high school prom (p. 24, tsn., April 7, 1971). Upon refusing Benito's invitation, Benito stuck a knife on the left side of her body telling her that if she would not go with them to the H.E. building, he would stab her (Ibid). Benito Marbebe then hold her left arm with his left hand and with his right hand holding the knife stuck on her left side, pushed her forward leading her to the premises of Mandurriao Elementary School passing on the left side of Oñate Street, then to the private road leading to the school premises until they reached the back porch of Mandurriao Elementary School (p. 25, tsn., April 7, 1971). That Benito Marbebe then forced her to go up the stairs of the back porch of the H.E. building which was dark (p. 26, tsn., April 7, 1971) while the other accused Alfonso Escalera stayed below the porch (p. 28, tsn., April 7, 1971) and once there, Benito Marbebe pulled off her chaleco or outer coat (p. 26, tsn., April 7, 1971) and then took off her dress which was with automatic button in front thus making her nude up to the waist (p. 27, tsn., April 7, 1971). That she at first held on to her dress but was told by accused Marbebe for her to keep still otherwise he would stab her (p. 29, tsn., April 7, 1971). That after Benito took off her blouse, he then pulled down her short with stretchable garter including her panty exposing her whole naked body (Ibid). The accused then held her by her right hand with his left hand and pushed her down to the wooden floor (Ibid), causing her to fall on a sitting position with her two hands propping up her body. Benito then knelt down beside her left leg (p. 30, tsn., April 7, 1971), then suddenly pushed down her left leg with his left hand causing her to fall flat on the floor (p. 31, tsn., April 7, 1971). Marbebe then knelt down beside her left leg and pulled down his trousers and shorts (Ibid) and then laid on top of her, at the same time pointing his knife on the left side of her neck (Ibid).

Marbebe then kicked, with his right foot, her left leg to make her legs spread out (p. 32, tsn., April 7, 1971) and while on top of her, Marbebe bit her right nipple (Ibid) and she then noticed that Marbebe held his organ to hers making undulated movements thereby causing his penis to penetrate her womb as she felt pain on her womb (Ibid), she cried as she was afraid to shout because she was threatened that if she would not keep still he would stab her (pp. 24-25, tsn., May 31, 1971). That while Marbebe was having carnal knowledge with her, they heard somebody calling her name coming from a pathway leading to the H.E. building (p. 32, tsn., April 7, 1971) and she recognized the voice to be that of her elder brother Leandro Origin (pp. 33, tsn., April 7, 1971). That on hearing this call, Benito Marbebe then raised his body kneeling between her thighs and she then felt something sticky fell on her belly and lap (Ibid) and Benito then pulled up his pants and when her brother Leandro arrived on the stairway, Benito jumped over the balustrade (Ibid). When her brother reached her, he asked her what happened and she told her brother that she was raped by Benito Marbebe (p. 24, tsn., April 7, 1971). Her brother then made her put on her dress and told her for them to go home (Ibid). That on their way to the stairs of the H.E. building, she stepped on a knife which she picked up and gave it to her brother and when shown a stainless kitchen knife presented as Exhibit 'C' (pp. 34-35, tsn., April 7, 1971), she identified it similar to the knife she picked up that evening and gave to her brother Leandro and also similar to the knife which Benito Marbebe threatened to kill her (Ibid). That when they arrived in their house, her brother related to their mother what happened to her and she then washed her belly and thigh including her womb as she felt dirty (p. 36, tsn., April 7, 1971). Their mother then sent for her uncle Benito Zamora known to them as Tio Dione who lives nearby and when her uncle arrived, they went with their uncle to the police station in Mandurriao at about 8:50 or 8:55 that evening (Ibid) and there filed their complaint to Cpl. Huervas to whom her uncle also gave the knife that she gave to her brother Leandro Origin (pp. 36-37, tsn., April 7, 1971). Cpl. Huervas then called for the mobile patrol of the Iloilo City Police and when it arrived, they were taken to the police headquarters, she was then examined physically by Dr. Tito Doromal (Ibid), medico-legal officer of the Iloilo City Police Department who issued her a medical certificate which she also identified and marked as Exhibit 'A' (p. 38, tsn., April 7, 1971).

"Dr. Tito Doromal, medico-legal officer of the Iloilo City Police Department testified that at about 11:00 in the evening of September 18, 1970 he physically examined Rebecca Origin at his office in the Iloilo City Police Department (p. 4, tsn., March 17, 1971) and on his examination he found fresh lacerations of the hymen at 3:00, 7:00, 9:00 and 10:00 positions, with the vaginal opening which could admit with difficulty two fingers, - middle and forefingers (p. 5, tsn., March 17, 1971). He found no seminal fluid inside the womb (Ibid). He also found an abrasion on the fourchetts of about 3 mm. in a diameter at the base (Ibid). He further found contusion 1.5 by 3 cm. in diameter posterior aspect upper third right forearm and another contusion 1 x 1.5 cm. in diameter at the areola mamma or nipple right at 11:00 position which could have been caused by a bite of teeth (Ibid). Witness further testified that the lacerations in the hymen inflicted less than 12 hours before his examination could have been caused by the insertion of a male organ (p. 6, tsn., March 17, 1971). He also explained that the abrasion on the fourchetts which is located at the base of the vagina with a V-shape could have been caused by the pressure of a male organ (pp. 6-7, tsn., March 17, 1971).

"He identified the medical certificate he issued marked as Exhibit 'A' (p. 4, tsn., March 17, 1971)." (pp. 2-7, Appellee's Brief)

Against the foregoing evidence of the prosecution, accused-appellant Benito Marbebe, 19 years old, admitted having had carnal knowledge with Rebecca Origin on the night of September 18, 1970, not with the use of force or through intimidation but with her full consent. He testified that about 6:30 to 7:00 in the evening of September 18, 1970, he was with Alfonso Escalera in the public market of Mandurriao, Iloilo City. They saw Rebecca Origin walking along Oñate Street going to the corner of Mapa and Oñate Streets near the police station. He and Escalera approached Rebecca and he invited her to go with them to the Home Economics building of the Mandurriao Elementary School. Rebecca agreed with the request that they should not stay there long. Upon reaching the place, accused told Escalera to go down. After Escalera had left, he (accused-appellant) kissed Rebecca and she

did not resist. He was about to undress her but she stopped him, saying that she would do it herself. After Rebecca had undressed herself nude, he took off his shirt and trousers, and approaching Rebecca they embraced each other. He then told her to lie down which she did. They had sexual intercourse and after having consummated the act, they both sat in the porch. Few minutes later they heard a voice from a distance calling for Rebecca. This was followed by another call and a third one and when he realized that it was Leandro Origin, an elder brother of Rebecca, he jumped from the porch and went under the building. Leandro Origin, instead of following him, went up the building where he saw Rebecca nude. Leandro asked her sister who her companion was but the latter did not answer. Leandro gave fist blows at Rebecca who was ordered to put on her dress. When Rebecca and Leandro were going down the stairs, he (appellant) saw Leandro holding a stainless knife.

Further, appellant testified that prior to September 18, 1970, he and Rebecca have been sweethearts for about a year, after three months of courtship. Leandro did not know he was courting his sister because he never went to visit her in her house. Before September 18, he had dated Rebecca twice - the first, in an unoccupied house, and the second, inside a movie house.

In this appeal, appellant contends that the trial court erred in convicting him.

Appellant claims that the knife identified by the complainant as the instrument used against her did not belong to him; that it was improbable that the said 7 1/2-inch stainless steel knife which he allegedly pointed at Rebecca's body would not have been noticed by people nearby considering that the place was well-lighted; that the invitation to go to the dark back porch of the Home Economics building could and should have been refused by her; and, that the performance of the sexual act of appellant, as described by complainant, is acrobatic and ceremonious.

We are not persuaded and We affirm the decision of the trial court. The fact that nobody noticed appellant pointing a knife at complainant is possible considering that the incident happened about 7:45 in the evening and complainant was between appellant and his companion Alfonso Escalera. And, there is no evidence that on the way to the Home Economics building they met people who could have noticed the knife poked at complainant's side. There is nothing unusual either about the knife being left behind when appellant jumped out of the building upon hearing the voice of complainant's brother. The impulse of anyone in such a situation would be to escape considering that Leandro's appearance was sudden and unexpected. Rebecca's testimony, he averred, on how the sexual intercourse was consummated was nothing less than acrobatic because when he placed himself on top of her, his body was supported by his left hand while his right hand was holding a knife pointed at the left neck of Rebecca. It was impossible, he argued, for him to have done the act with his body being sustained only by one hand, in which case, the intercourse was done in an unusual manner.

We do not see the impossibility in the consummation of the act because his body could be leaning on both of his arms, with the right hand also holding the knife. That way, there could have been no difficulty in perpetrating the crime of rape. Finally, if appellant's story is true and correct We cannot imagine why Rebecca, after the alleged sexual act was done with her full consent, was still naked when they were already seated at the porch and when her brother Leandro arrived. The first thing any woman would do after the act would be to put on her clothes. The fact that she was naked when Leandro arrived only confirms her testimony that appellant jumped out of the porch when he was still on top of her. We also take note of the observation of the trial court with respect to complainant's demeanor on the witness stand. She was only 17 years old.

"x x x The manner the complaining witness testified, her demonstration as to how the accused threatened her with a knife at corner Mapa-Oñate Street, how the accused undressed her in the dark back porch of the H.E. building, how the accused subsequently pushed her down to the floor, the manner she related all these things while in the witness stand, the way she answered the question of the prosecuting fiscal, the court and defense

counsel, all these circumstances taken together convinced us of the truth of what the complaining witness had testified. The circumstances testified to by prosecution witnesses Leandro Origin, Leonardo Londres and Police Cpl. Huervas all tend to corroborate the testimony of the complaining witness. x x x

and that of appellant -

"x x x We noticed that while the accused was in the witness stand, by his mannerism of testifying in court, he appeared unconcerned to the gravity of the charge against him, so much so, that the Court noticing his behavior in the witness stand, the way he answered the questions of his counsel, of the court and of the prosecuting fiscal, had to call his attention to the fact that the crime charged is a very serious one, carrying with it a penalty of a long prison term or even a life sentence. In spite of this warning, the Court noted the unconcerned behavior of the accused who oftentimes grinned or smiled while in the witness stand. For this reason, and the improbability of his testimony, it is the considered opinion of the court that the accused could not be relied for truthfulness and we cannot believe his testimony that he had carnal knowledge with the complainant's consent without the use of force or intimidation." (pp. 16-18, Decision of the lower court)

WHEREFORE, the appealed judgment is **AFFIRMED** in toto with the modification that the moral damages is increased from P12,000.00 to P15,000.00. With costs.

SO ORDERED.

Melencio-Herrera, (Acting Chairman), Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.

Teehankee, J., (Chairman), on leave.

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