

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FAUSTINO HORTELANO Y NAVARRO & JUANITO PAGANAO Y SAQUING, DEFENDANTS-APPELLANTS.

G.R. No. L-37009. March 16, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal interposed by the accused Faustino Hortelano y Navarro and Juanito Paganao y Saquing from the decision of the Court of First Instance of Kalinga-Apayao[*] in Criminal Case No. 7-70, finding them guilty of the crime of Rape, as co-principals by direct participation, the dispositive portion of which, reads:

"WHEREFORE, the Court finds the accused, FAUSTINO HORTELANO Y NAVARRO and JUANITO PAGANAO Y SAQUING guilty beyond reasonable doubt, as co-principals, by direct participation, of the crime of rape defined and penalized under Article 335 of the Revised Penal Code in relation to Article 63 of the same Code and there being proved two aggravating circumstances with only one mitigating circumstance, the Court hereby sentences each one of them to DEATH; to jointly and severally indemnify the offended party, Marcelina Elus, the sum of P20,000.00 for moral damages and to proportionately pay the costs. x x x" (p. 77, Rollo, Decision)

The other accused, Joseph Lingbawan y Condayan, who was subsequently included with the two aforesaid accused in an amended complaint, because of his refusal to testify in behalf of the complainant (t.s.n., p. 90) was acquitted by the trial court, finding no convincing evidence to show his participation in the commission of the crime. (p. 77, Rollo).

The facts of the case, as found by the trial court, are briefly as follows:

On January 16, 1970, complainant, Marcelina Elus, then a fifteen (15) year old country lass, was staying in the boarding house of Rosalina Mahoy located at Poblacion Tabuk, Kalinga-Apayao (t.s.n., pp. 60, 66). At about 2:00 o'clock in the afternoon of that day, while complainant was conversing with her boardmates, her third degree cousin, Juanito Paganao, arrived and told her to go home to Pinukpuk because her mother was sick (t.s.n., pp. 66-67). Juanito Paganao also informed her that he will fetch her later that same afternoon (ibid.).

At around 4:00 o'clock in the afternoon, Paganao, together with Hortelano and Lingbawan came to fetch the complainant in her boarding house (t.s.n., p. 68). She asked permission from Mrs. Mahoy to go home and requested Emilia Omang, her boardmate, to accompany her (t.s.n., pp. 68-69). They then rode on a passenger jeep owned and driven by Hortelano. The latter stopped the jeep by the Dangwa Station to load some cargoes, and from there, they went towards the market. At the market place, Hortelano told Emilia Omang not to go with them because Emilia's father might scold her. Leaving Emilia Omang behind, they proceeded towards Pinukpuk (t.s.n., pp. 69-70). Somewhere at Bulanog, they passed by the boarding house of Sylvia Bongawen, a niece of Hortelano, whom they said will be the complainant's companion, but Sylvia was not there. They continued their journey and somewhere at barrio Tuga, Tabuk, the jeep stopped because of some alleged defects. Paganao and Hortelano

offered her a bottle of Tru-Orange and biscuits, respectively. They stopped at said place for thirty minutes, after which they again continued their trip. At barrio Camcamalog, Pinukpuk, the jeep stopped again because of what they claimed to be another defect. They told the complainant to go down and as soon as she alighted, Paganao held her two hands and dragged her away, saying to her that he would tell her something (*ibid.*). Paganao then started kissing her, mashing her breast and holding her nipples (*ibid.*). The complainant cried and shouted for help and ran towards Hortelano, who instead of helping her, did just what Paganao had done (*t.s.n.*, pp. 71-72). After this incident, they continued their trip but the jeep again stopped somewhere below the ranch of Engineer Marana. There was again the excuse of another defect. There she was told once more to alight and Paganao approached her and held her hands and dragged her away from the jeep. She stumbled and Paganao started kissing her and at the same time mashed her breasts. The complainant pleaded to Paganao not to molest her, they being relatives, but the latter bluntly replied, "whatever you do you are mine tonight" (*t.s.n.*, pp. 73-74). When the complainant was able to free herself from the hold of Paganao, Hortelano met her, and again, she was subjected to indignities by Hortelano. When she was able to free herself, she went to sit at the back seat of the jeep but Hortelano pursued her, then boxed her in the stomach, rendering her unconscious. When she came to her senses, Hortelano was on top of her and was having sexual intercourse with her. She pushed and kicked Hortelano but she was too weak to put up a strong resistance. Afterwards, she noticed that her panty was below her knees. All this time, Paganao and Lingbawan were keeping watch at the back of the jeep that was parked on the road (*t.s.n.*, pp. 75-76). Having consummated his lustful desire, Hortelano called Paganao and Lingbawan and they then proceeded to Pinukpuk. The complainant was dropped at the house of Mary Bonggawon where she spent the night. The following morning, she went out to urinate and noticed blood in her panty and felt pains in her stomach. Thereafter, she requested one of her townmates to look for her brother to whom she later related the sordid incident. They then reported the matter to the police.

On January 19, 1970, the complainant submitted herself for physical examination to Dr. Edilberto Fernando, Provincial Health Officer of Kalinga-Apayao Province, who reduced his findings in writing (Exhibit "A"), to wit: (a) Swelling and marked reddening with hematoma of the vaginal orifice; (b) Wound, lacerated, fourchette, vaginal orifice; (c) Hymen completely lacerated with oozing of small amount of blood; and (d) non-presence of spermatozoa.

In his defense, appellant Hortelano declared that it was only he and Paganao who fetched the complainant at 4:00 P.M. of January 16, 1970; that Paganao alighted at Bulanao and it was only he (Hortelano) with the complainant and his niece Sylvia Bongawen (whom they passed by at Bulanao) who proceeded to Pinukpuk; that he did not box the complainant, and did not have sexual intercourse with her, as she was seated in front of the jeep with his niece, and there was no space at the back seat of the jeep which was then full of baggage; that he dropped the complainant and his niece before the crossing at the Pinukpuk junction; and that he proceeded to the junction where he slept alone in his jeep. Hortelano also testified that the complainant had already been his sweetheart for around one year prior to January 16, 1970; that he had had numerous instances of sexual intercourse with her; and that said complainant charged him in court because he did not accede to her request that he divorce his wife so he could marry her.

On the other hand, Paganao put up alibi as his defense, claiming that he went to Tabuk, Kalinga-Apayao to have his appointment renewed as provincial caminero; that at about 4:00 o'clock p.m. of January 16, 1970, he boarded the jeep of Hortelano which was then leaving Tabuk for the provincial capital of Bulanao; that they fetched the complainant from her boarding house because earlier that day, the latter (whom he met near the school) told him to tell Hortelano to pick her up as she was going on a vacation; that he never told the complainant that her mother was sick; that on reaching Bulanao, he alighted to see the provincial governor, while Hortelano and the complainant proceeded to Pinukpuk; that he failed to see the governor because he found out later that the latter

was in Manila; and that he proceeded to the house of Sgt. Gunnawa where he slept that night.

Finding the clear and positive testimony of the complainant credible, the trial court convicted the accused-appellants Hortelano and Paganao as charged, and sentenced them to death.

The issue, therefore, rests on credibility, and after a careful review of the evidence on record, We find no plausible reason to hold otherwise.

The complainant's categorical and straightforward testimony, narrating the sequence of events that transpired and the behavior of the appellants from the time they fetched her in her boarding house in Tabuk, up to the time they reached Pinukpuk, is logical, probable and has the earmarks of truth.

The complainant's testimony, which was partially corroborated by Mrs. Mahoy (the landlady of the boarding house) and Ernesto Obal (a boardmate of the complainant), clearly established that she was fetched by the appellants at 4:00 o'clock that afternoon, and that she was molested by them on their way to Pinukpuk. Said prosecution witnesses positively identified the appellant, whom they already knew very well before the incident, because appellant Hortelano's nieces were staying in the same boarding house, (p. 12, TSN) and appellant Paganao is witness Ernesto Obal's second cousin (p. 54, Rollo). Likewise, the findings of Dr. Edilberto Fernando, the examining physician, corroborated the testimony of the complainant that she had been sexually abused on that fateful night.

There is no evidence to show that the complainant and the aforesaid prosecution witnesses were actuated by any evil motive to testify against the appellants. We cannot doubt the sincerity of the complainant, for it is unthinkable that a young woman and a third year high school student like her, would go to court and air a dishonorable act performed upon her by someone if the same is not true, knowing fully well that she would be exposing herself to public shame, embarrassment and humiliation. (People vs. Reyes, 137 SCRA 99).

The main thrust of appellant Hortelano's testimony is focused on the testimony of the complainant that after she regained consciousness, she noticed the former having sexual intercourse with her, and that her panty was below her knees (p. 75, TSN). Appellant Hortelano claims that it was physically impossible for him to have had sexual intercourse with the complainant, who was then fifteen years old and presumed to be a virgin, because her panty was never removed (p. 7, Appellant Hortelano's Brief).

There is obviously an absence of sincerity and consistency in appellant Hortelano's testimony. During the trial, he testified that the complainant was his sweetheart and that he had had sexual intercourse with her many times. (p. 198, t.s.n.).

Moreover, the circumstances obtaining in the case at bar negate appellant Hortelano's proposition that it was impossible for him to have raped the complainant. It must be recalled that when the complainant resisted the appellants' attempts to molest her and went inside the jeep, appellant Hortelano followed her and boxed her on the stomach, rendering her unconscious. It was while complainant was lying prostrate and defenseless when appellant Hortelano sexually attacked her. Considering the physical state of the complainant, she was an easy prey to his bestial instincts although her panty was only below her knees. Furthermore, the complainant explained that the garter of her panty was loose. Thus, on cross examination, she testified:

"Q.

You want to impress this Honorable Court that at no time was your panty ever removed from out of your body because it only reached as far as your knees, is that right?

"A. It was down below my knees, sir.

"Q. So at no time was the panty ever removed from your legs, is that correct?

"A. No, sir.

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xxx

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"A.

It was not really removed from my legs; it was up below my knees because the garter of my panty was loose."
(pp. 102-103, t.s.n.).

Appellant Hortelano tried to extricate himself by alleging “. . . if what the offended party said was true to the effect that she struggled with appellant Hortelano, the latter must have been able to insert his fingers inside her vagina several times, thereby causing the laceration of the hymen, the lacerated wound of the vaginal orifice and the swelling and marked reddening with hematoma of the vaginal orifice". (p. 10, Appellant Hortelano's Brief).

The vacillating nature of this defense is apparent. At one instance, appellant Hortelano would say that "nothing unusual happened during the trip" (p. 6, Ibid.) and then he would say that "he must have inserted his fingers inside her vagina several times", thus causing the injuries (p. 10, *ibid.*). Moreover, this story is not only far-fetched but quite ridiculous.

The incredibility of appellant Hortelano's version is further aggravated by his failure to present his niece, Sylvia Bongawen, whom he alleged to be with them on their trip to Pinukpuk (pp. 70, 181, t.s.n.). Considering the gravity of the offense charged against him, he should have presented Sylvia Bongawen to corroborate his testimony that indeed, nothing happened between him and the complainant. The suppression of this piece of parol evidence only leads us to inescapable conclusion that the testimony of said witness, if produced, would tend to sustain the charge.

On the other hand, appellant Paganao interposed alibi as his defense, and assails the trial court's finding that he conspire with appellant Hortelano in the commission of the crime.

It cannot be gainsaid that alibi is a weak defense. In the face of the clear and positive testimony of the prosecution witnesses, regarding his participation in the crime, his alibi dwindles into nothingness. (*People vs. Tuscano*, 137 SCRA 203).

While it may be true that appellant Paganao never had coitus with the complainant, the latter's testimony established that he was responsible in inducing her to go with the group on the pretext that her mother was sick; that at barrio Camcamalog, Pinukpuk, appellant Paganao told her to alight from the jeep and then he dragged her away and started kissing her, mashed her breasts and held her nipples; that somewhere below the ranch of Engineer Marana, appellant Paganao repeated his dastardly acts; that when complainant reminded him that they were relatives, he ominously answered, "whatever you do you are mine tonight"; and that while appellant Hortelano was having sexual intercourse with her, appellant Pagano was somewhere on the road, at the back of the jeep, keeping watch. His anterior, concomitant and posterior acts indicate that he participated and confederated with appellant Hortelano in bringing to fruition their criminal design.

Appellant Paganao argues that if complainant's version is true that both appellants were determined to molest her, her natural reaction should have been to run away from her aggressors. Instead, she went to sit at the back of the jeep, thus manifesting such conduct which is a little short of seduction.

On cross-examination, complainant explained the reasons for her conduct, to wit:

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"Q.

When you stopped for the second time at Camcamalog, why did you ride on that jeep again with Hortelano and Juanito Paganao?

"A. I rode on the jeep because I wanted to see my mother whom they say was sick and that I trust Juanito Paganao because he is related to me." (p. 100, t.s.n.)

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Well settled is the rule that conclusions of the trial judge, regarding the credibility of witnesses, command great respect and consideration, specially when, as in this case, they are supported by the evidence of record.

Under the 1987 Constitution, the death penalty has been abolished, thus, Sec. 19 (1) thereof provides:

"Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua."

WHEREFORE, the judgment of conviction is hereby **AFFIRMED**, but the sentence is reduced to reclusion perpetua.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Alampay, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Melencio-Herrera, J., on leave.

[*] Penned by Judge Ricardo D. Diaz

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