

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERARDO ANDINO, ACCUSED-APPELLANT.

G.R. No. L-36400. April 15, 1982

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an appeal from the decision in Criminal Case No. 174-N of the Court of First Instance of Ilocos Sur, Branch II entitled "People of the Philippines vs. Gerardo Andino" convicting the accused of rape to the Court of Appeals where the appeal was docketed as CA-G.R. NO. 09440-CR.

In a resolution promulgated on November 3, 1972 the Court of Appeals certified the appeal to the Supreme Court on the ground that the said appellate court is of the opinion that the penalty to be imposed on the accused appellant should be reclusion perpetua.[1]

The accused, Gerardo Andino, was charged with rape in the following information:

"The undersigned Provincial Fiscal upon sworn complaint originally filed by the offended party with the Municipal Court, accuses Gerardo Andino of the crime of rape, defined and penalized under Art. 335 of the Revised Penal Code, committed as follows:

'That on or about the 12th day of October, 1967 in the municipality of Sta. Maria, province of Ilocos Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Gerardo Andino, did then and there wilfully, unlawfully and feloniously have carnal knowledge of one, Milagros Degracia by means of force and violence and intimidation by pointing a sharp pointed bolo at her breast and against the latter's will and consent.'

"Contrary to law.

"Vigan, Ilocos Sur, December 6, 1967.

"(SGD) JESUS F. GUERRERO

Provincial Fiscal"[2]

The trial court found the accused Gerardo Andino guilty beyond reasonable doubt of rape and sentenced him to suffer the indeterminate penalty of prision mayor in its medium period ranging from 8 years, 1 day to 10 years; to indemnify the offended party in the amount of P1,000.00 without subsidiary imprisonment in case of insolvency; and to recognize and support the offspring if any as a result of the crime; and to pay the costs.[3]

As summarized by the Court of Appeals in its Resolution certifying the case to this Court, the facts of the case are:

"The complainant is a 16-year old girl who alleges, on testimony, that between 9 & 10 o'clock in the evening of October 12, 1967 she went, together with the 9-year old daughter of her guardian, to see a program at the West Central School, Sta. Maria, Ilocos Sur, about 40 or 45 meters away from her house; that during the

progress of the program, she felt the need of going to the toilet and thus went to one located some distance from the premises. On her way back, she was suddenly grabbed by the hands by the accused, Gerardo Andino, and pulled towards a caimito tree some three (3) meters away from the toilet. She tried to release herself but his hold was too strong for her; she tried to shout but the accused pointed his bolo at her saying 'If you shout, I will kill you.' She nevertheless shouted for help until the accused boxed her twice on the stomach rendering her unconscious. When she regained consciousness, she found the accused taking carnal knowledge of her. After the accused left her, she put back her panties which she noticed was torn (Exhs. C, C-1, and C-2). She fixed her dress and went directly back home, to the house of her aunt and guardian Hermenegilda Perona, and with whom she was living at the time. Hermenegilda was already asleep and the complainant had to wake her up to narrate to her what had happened. Hermenegilda decided to report the matter immediately to the Philippine Constabulary but unfortunately, she fell ill the very next day and was not well enough to go with her niece to the authorities until seven days later. At the PC compound, the complainant gave her statement. She was also examined by the doctor whose findings are before the court as Exh. E, and the contents of which are as follows:

"1. Both breasts are developing and hemispherical in shape.

"2. Pubic hair scarce in number.

"3. There is contusion over the inferior aspects of both labia minora.

"4. There are healed laceration in the hymen at 7:00 o'clock and 8:00 o'clock.

"5. Vaginal orifice admits two fingers and a 3.0 cm. diameter vaginal speculum.

"6. There are no more signs of physical violence on her person.

"Besides the complainant, the prosecution had three (3) other witnesses namely, the doctor, whose testimony was limited to reiterating the findings which he recorded in the medical certificate (Exh. E) and his opinion that the subject of the examination showed traces of healed lacerations in the hymen and the signs of healing contusion on the labia minora, both of which definitely established the fact that a man's genital organ had had access to the girl's not earlier than two or three days before the examination.

"Hermenegilda Perona corroborates the statement of the complainant that at about 11:00 o'clock in the night in question the latter woke her up crying to inform her that Andino had raped her. She also testifies that although she wanted very much to go to the authorities the very next day to report the crime, she was not able to do so because she fell ill for five (5) days and because of a typhoon that ravaged the place then. She avers, however, that immediately after the typhoon she lost no time to bring Milagros to the municipal authorities and to the doctor for physical examination.

"The last witness for the prosecution was Estefanio Aquino who took the witness stand to say that he was at the program held at the West Central School; that he happened to be about five (5) meters away from Gerardo and Milagros answering the call of nature behind one of the school toilets, when he heard her shouting for help; that he saw the accused threatening Milagros with a knife as well as boxing her on the stomach; that he saw the accused 'in a kneeling position' and trying to go over Milagros who at that time was 'not moving' probably meaning inert; that he was too afraid to interfere, and so he just ran to the house of Milagros' relatives but when he did not find anybody in, he just went home; that the following morning at about 7 o'clock he went to Milagros' house and found Milagros' uncle and aunt (Hermenegilda Perona and Oscar Zamora) already discussing the incident of the night before; that he told them what he knew and saw, and that he went along with Hermenegilda and Milagros to the authorities before whom he gave a statement.

"The defense offers the version that on the night in question the accused and one Eduardo Dumlao had gone together to the program at the West Central School; that while the program was in full swing, these two went together to the toilet to relieve themselves; that on the way, they saw William Dar and Mila Degracia holding

hands and coming from the direction of the toilets; whereupon, the accused addressed himself to Mila with the following admonition: 'Be careful, You are doing something. I will tell you to your auntie' after which Andino and Dumlao returned to their seats. Upon cross-examination, however, the accused admits that despite the warning he gave Mila he was not able to report her alleged misconduct to her aunt, on the excuse that he had no time to do so as he had to go early to his office. He, however, maintains that he did mention the incident to Hermenegilda's husband two days later, when they met casually.

"In other words, the accused denies the charges and suggests that the motive of complainant in filing this complaint against him is to cover up what she and William Dar have 'done' which he and Dumlao saw." [4]

The trial court convicted the accused-appellant Andino by giving full faith and credence to the evidence of the prosecution. It characterized the victim's testimony as given with "sincerity and frankness" though evinced by a state of mind "mixed with emotions xxx of defiance and anger". It ascribed such attitude of a 16-year old, simple unsophisticated girl to disgust and hatred towards the accused, as natural behavior because of her loss of honor.

The testimonies of three (3) other prosecution witnesses, Hermenegilda Perona, Esteban Aquino and Dr. Benito Dolor were all considered by the trial court to have amply corroborated the cause and theory of the prosecution.

Hermenegilda Perona, an aunt and guardian of Milagros Degracia, the alleged victim, testified that she was awakened by Milagros at about 11:00 o'clock in the evening of October 12, 1967 to be informed by the latter that she was raped by the accused.

Estefanio Aquino's testimony is that on the night in question, he saw the accused and the victim, Milagros Degracia pulling each other in front of the toilet of the West Central School of Sta. Maria, Ilocos Sur; that he heard the shouts of the victim; that the accused brought out a knife to threaten her; that he saw the accused box the girl two times causing the girl to fall to the ground after the second blow; and that he saw the accused in a kneeling position over the prostrate body of the victim.

The Municipal Health Officer of Sta. Maria, Ilocos Sur, Dr. Benito Dolor, who conducted the physical examination of the victim six (6) days after the alleged incident happened, issued a medical certificate in his own handwriting showing the results of his findings (Exh. "E"). Dr. Dolor testified that there was a healed laceration of the hymen at 7:00 and 8:00 o'clock; that the contusion appeared redish in color which could have been caused by a blunt instrument or the genital organ of a man inflicted on the tissue two or three days before the date of the examination but not in an earlier date for the said tissue affected should have been bluish in color at the time of the examination; and that Milagros Degracia was not a physical virgin when he examined her.

The trial court discredited the theory of the defense as not only flimsy but also preposterous and conjectural. Notwithstanding the fact that the witness Lariza Perona, who was then nine years old, could not respond to a series of questions propounded by the fiscal, the trial court gave credit to such prosecution's move as evincing "a magnitude of truth to the theory of the prosecution."

The accused-appellant, in his appeal brief filed with the Court of Appeals, assigned the following errors:

"I

"THE TRIAL COURT ERRED IN BELIEVING THE TESTIMONIES OF THE WITNESSES OF THE PROSECUTION.

"II

"THE TRIAL COURT ERRED IN NOT BELIEVING THE TESTIMONIES OF THE WITNESSES OF THE DEFENSE.

"III

"THE TRIAL COURT ERRED IN CONVICTING APPELLANT AND IN NOT ACQUITTING HIM."[5]

On July 21, 1976, the accused-appellant through new counsel filed with this Court a motion for new trial with Annex 1, (Joint affidavit of three witnesses), followed by the submission on September 16, 1976 of the sketch of the place, (School Grounds of the West Central Elementary School) where the alleged crime was committed as part of the evidence for new trial.[6]

After the filing of numerous motions for extension within which to file his comment, the Solicitor General finally filed the same on October 12, 1976 opposing the motion for new trial. This Court resolved "to DEFER action on aforesaid motion until decision on the merits".[7]

A careful review of the evidence of record militates strongly against the conviction of the accused in this case.

The alleged rape took place inside the school grounds where a program of the Boy Scouts was being held on the night of October 12, 1967. Hundreds of people of the town of Sta. Maria, Ilocos Sur were present to watch the said program. The site is the town's West Central Elementary School. The said school is located along the National Highway in the town proper which is 45 meters away from the house of the complainant, Milagros Degracia. The school is 10 meters away from the Philippine Constabulary outpost which is barely 16 meters away from the spot where the alleged rape was said to have been committed inside the school compound.

The only person out of the multitude of people inside the school grounds in the evening of October 12, 1967 at about 9:00 o'clock P.M. who allegedly saw the incident was Estefanio Aquino. The testimony of said prosecution witness Aquino is incredible in that he did not raise any alarm nor did he inform anybody including the nearest of kin of the alleged victim on the night in question. Neither did said prosecution witness report the incident to the Philippine Constabulary authorities barely 16 meters away from the scene of the commission of the crime, during all the time he was in the school grounds or afterwards at the time when he went home. Witness Aquino testified that he went on the following morning at 7:00 o'clock to report the incident to Mrs. Hermenegilda Perona, the aunt and guardian of the victim but found out that the spouses Perona were already talking about the incident. It was only after the lapse of thirteen (13) days or on October 25, 1967 when the complainant with her aunt, Hermenegilda Perona and witness Aquino reported the incident to the Philippine Constabulary authorities. What rendered more doubtful the testimony of prosecution witness Aquino is the fact that he contradicted himself by stating before the court that it was a knife that he saw being held by the accused which was used to threaten the victim instead of a bolo which he had said in his affidavit executed before the PC authorities.

The findings and testimony of the Rural Health Physician, Dr. Benito B. Dolor, Jr. of Sta. Maria, Ilocos Sur, cast more doubt on the guilt of the accused. The physical examination by the Rural Health doctor of the alleged victim took place on October 18, 1967, six days after the incident happened on October 12, 1967 (Exhibit "E").

Dr. Dolor, Jr. testified in an emphatic manner that his finding No. 3, on Exhibit "E", i.e., "(T)here is contusion over the inferior aspects of both labia minora" was redish in color which clearly shows that the injury was inflicted two or three days before the date of examination. The said physician categorically stated that the contusions he found on the genital organ of the alleged victim could not have been inflicted five or six days before the physical examination because the color of the wound or injured tissue would have changed from redish to bluish. Such change of color of the injured tissue is not in any manner influenced by the climate or the physical build of the person injured. The pertinent portion the testimony of Dr. Dolor reads:

"Q I refer you to your finding No. 3 which read, 'there is contusion over the inferior aspects of both labia minora', doctor, by what do you mean medically this 'contusion'?"

"A Contusion is discoloration of the tissues mentioned.

"Q What might have caused the redish discoloration of the both labia minora?

"A This contusion may be caused by some blunt object that was put in contact with the tissues involved.

"Q And aside from being caused by blunt object, could it be possible that it might have been caused by genital organ of a man?

"A Yes, sir.

"Q With your findings could you be positive that the contusion found in the labia minora on the subject might have been caused five or six days before the examination, doctor?

"A This has been inflicted recently because it was redish in color say about two or three days before the same was made.

"Q But it is also possible that the contusion was inflicted five days or six days before the examination?

"A It is hardly possible because if it were five to six days before the examination was made, the contusion would have changed in color from redish to bluish.

"Q But of course that depends upon the condition when the contusions were inflicted, I mean the climate if it is cool, it might be possible that said contusions might have been inflicted five days before the examination?

"A I do not think so.

"Q But it is possible that contusions of said nature may appear different depending upon the physical build of the person?

"A I do not think so that they are influenced by the build of certain person.

"Q But it is possible that contusions although according to you it is hardly possible, it may be slimly possible on some remote possibility, correct?

"A I do not think so."[8]

The findings, (Nos. 4 and 5, of Exhibit "E"), regarding the laceration of the hymen and the admission or acceptance of the vaginal orifice of two fingers and/or vaginal speculum three (3) centimeters in diameter are decisive factors inconsistent with the guilt of the accused. The examining physician testified that existence of such conditions upon the alleged victim simply signified loss of physical virginity. The loss of physical virginity of a woman, as further testified to by the physician, can be attributed either to the insertion of a blunt instrument or male organ into the vagina or by the woman being an athlete, like riding a bicycle, running fast and playing volleyball. In her direct testimony, the complainant admitted that she played volleyball, rode a bicycle and was a runner.[9]

The prosecution's medical evidence has failed to show that the accused-appellant had committed the crime of rape. There is no finding of physical violence on the body of the alleged victim.[10]

It is also inconceivable and contrary to human experience and conduct that a crime of rape would be committed amidst a multitude of people within the premises of a school compound, where a Boy Scouts jamboree program was in progress and just a few steps, barely 16 meters away, from the Philippine Constabulary outpost in the town proper of Sta. Maria, Ilocos Sur.

In *People vs. Francisco*[11] this Court said:

"According to the trial Court, it was fully convinced of appellant's guilt after 'thoroughly and conscientiously' observing the demeanor and conduct of complainant on the witness stand and considering her 'straightforward' testimony. There is no question that on matters of credibility of witnesses, the conclusions of the trial Court carry great weight and are entitled to the highest respect by appellate Courts, hence, should not be disturbed in the absence of proof of misappreciation of evidence.

"However, there are certain facts of substance and value that militate against an affirmation of the finding of guilt in this case, particularly when the evidentiary rule is recalled that in crimes against chastity, the testimony of the injured woman should not be received with precipitate credulity; and when the conviction depends at any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. For rape is an accusation 'easy to be made, hard to be proved, but harder to be defended by the party accused, though innocent.'"

It was also held in *Duran vs. Court of Appeals*[12] that:

"It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty. Added to this is the fundamental principle that conviction should rest on the strength of the prosecution evidence and not on the weakness of that of the defense."

For the foregoing considerations, this Court finds that the prosecution has not established the guilt of the accused of the crime charged by proof beyond reasonable doubt.

WHEREFORE, the judgment of conviction is hereby set aside and the accused Gerardo Andino is acquitted on reasonable doubt, with costs de oficio.

SO ORDERED.

Teehankee, Acting C.J., Makasiar, Guerrero, Melencio-Herrera, and Plana, JJ., concur.

[1] Resolution of the Sixth Division written by Justice Lourdes P. San Diego and concurred in by Justice Jesus Y. Perez and Justice Eloy B. Bello, Rollo, pp. 79-88.

[2] Rollo, p. 3.

[3] Decision, Original Records of Criminal Case No. 174 (-N-), p. 104.

[4] Resolution of the Court of Appeals, Rollo, pp. 80-84.

[5] Accused-appellant Printed Brief, p. 4.

[6] Rollo, pp. 119-127.

[7] Rollo, pp. 156-160, Resolution dated October 27, 1976, p. 162.

[8] T.S.N., pp. 79-81, March 14, 1968.

[9] T.S.N., p. 20, pp. 84-88, March 14, 1968.

[10] *People vs. Arciaga*, 98 SCRA 1.

[11] 105 SCRA 516, 527.

[12] 71 SCRA 68 (1976).

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