

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSEPH LEONES Y DUCUSIN ALIAS JESSIE, DEFENDANT-APPELLANT.

G.R. No. L-48727. September 30, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is an appeal from the decision of the Court of First Instance of La Union, Branch I, convicting the accused-appellant, Joseph Leones y Ducusin, of the crime of rape charged in the following information, to wit:

"The undersigned offended party after having been duly sworn to an oath in accordance with law hereby accuses JOSEPH LEONES y DUCUSIN alias Jessie of the crime of RAPE, committed as follows:

"That on or about the 22nd day of April, 1973, in the Municipality of San Fernando, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, said accused Joseph Leones y Ducusin alias Jessie, by means of violence and use of force compelled the offended party to swallow tablets and consequently thereafter while she fell into semi-consciousness the said accused wilfully, unlawfully and feloniously have carnal knowledge of the complainant Irene Dulay against her will in the house of the accused.

"CONTRARY TO LAW, with the aggravating circumstance of abuse of confidence.

" San Fernando, La Union, May 8, 1973.

(SGD.) IRENE DULAY
Offended Party

WITH MY CONFORMITY:

(SGD.) GAUDENCIO DULAY
(Father of the Offended Party)"

and sentencing him to suffer the penalty of reclusion perpetua and to pay the costs.

The facts are narrated in the People's brief as follows:

"Complainant Irene Dulay was a salesgirl employed in the store of Mr. & Mrs. Pepito Leones at San Fernando, La Union where she resided.

"On April 22, 1973, the complainant who had headache stayed in her room. Earlier that day, the members of the Leones family, including the accused-appellant Joseph Leones and his sister Elizabeth, had gone to nearby beach resort for a picnic.

"At about past noon the appellant and Elizabeth returned to their house. While there, the appellant and Elizabeth entered the room where complainant was lying down and forced her to take three tablets dissolved in a spoon which according to them were aspirin. The complainant refused to take the tablets but was forced to do so when the appellant held her mouth while his sister pushed the medicine. Then the appellant and Elizabeth left the room and after a while the complainant felt dizzy.

"Later, the appellant returned to the complainant's room and took off her panty. Then the appellant went on top of her. The complainant tried to push him but as she was weak and dizzy, the appellant succeeded in abusing her (pp. 2-8, 15-16, tsn, June 27, 1975).

"At about 4:30 P.M. of the same date, Natividad Leones, the stepmother of the appellant, found the complainant unconscious near her room without any panty on. She was then taken to the La Union Provincial Hospital by the driver of the Leones family (pp. 3-5, tsn, June 10, 1976).

"When admitted to the hospital at about 6:00 P.M. of the same date (April 22, 1973), the complainant was semiconscious, incoherent and hysterical. She refused to talk and to be examined by the doctors. She was irritated when approached by a male figure (Exhibit 'B', Records, pp. 280-281). The complainant was first attended to by Dr. Antonino Estioco who found out that she had vaginal bleeding (Exhibit '2', Records, p. 786). The complainant was then referred to Dr. Fe Cayao who was informed by Dr. Estioco that she might have been a victim of rape (p. 28, tsn, May 15, 1974). In the presence of the complainant's father, Dr. Cayao examined her on April 26, 1973 after which she issued a medical certificate with the following findings:

- '1. Presence of erythema of the vestibular portion of external genitalia;
- '2. Healing lacerations of the hymen at 2 o'clock and 10 o'clock;
- '3. Easily admit one finger with pain;
- '4. Unclotted blood at the vagina cavity;
- '5. Smear exam for sperm cell-negative; D'plococci - negative

Florence test - reagent not available.' (Exhibit 'A', Records, p. 3).

"Because of the lack of facilities in the hospital, Dr. Cayao was not able to make any examination to determine whether drug was given to the complainant. (pp. 23-24, tsn, May 15, 1974.)"[1]

The accused-appellant denied the charge imputed to him, claiming that at the time of the alleged rape between 2:00 o'clock and 3:00 o'clock p.m. on April 22, 1973, he was at the beach resort with the other members of the family, namely his sister Elizabeth, his stepmother Natividad Leones, his younger brothers and sisters named Marivic, Theresa, Carol, Pinky and Bongbong together with other companions, for a picnic and had lunch thereat, swimming and picture-taking.

As indicated earlier, the trial court, holding that "viewed from all legal aspects of this case, in the light of the recorded evidence, x x x is fully convinced that the crime of rape charged in the criminal complaint was committed by the accused. The evidence presented by the prosecution is not only clear and convincing but has established the guilt of the accused beyond reasonable doubt."

From this sentence, the accused appeals to Us, strongly submitting that the trial court erred in finding him guilty of the crime charged since the evidence presented against him did not prove his guilt beyond reasonable doubt.

At the outset, We note a number of significant facts from the recorded evidence of the prosecution which materially and substantially debunks and derails the theory of the Government and correspondingly impresses considerable merit to the defense.

1. The clinical case record of Irene Dulay's admission and confinement at the Provincial Hospital of La Union, marked Exhibit "2", contain entries which totally and completely belie the claim of the complainant that she was raped by the accused in the afternoon of April 22, 1973. The same is reproduced hereunder:

"LA UNION PROVINCIAL HOSPITAL
San Fernando, La Union

CLINICAL CASE RECORD

Fiscal Yr.:

1973

Physician:

Adm. No.:

275

Admitted by:

Dr. Estioco

File No. or Rec. No.

Approved by:

Ped.:

City Free:

Surg.:

Transient free:

Dept. ü Obs.:

Classif. Govt. free;

Med.:

Prvt. free:

EENT:

Hosp. pay:

C.U.:

Off. Hosp. pay:

Dental:

Off. Prvt. pay:

Name of Patient:

Irene Dulay

Maiden name:

Residence:

San Fernando, La Union

In case of accident or death notify Natividad Leones,

(employer)

Charge Hosp. Acct. to:

Age: 16 yrs.

Single: Married: Widowed: Natlity Fil..

Admitted: 6:00 P.M. 4-22-1973 Assgd PR: I Bed by Dr. Estioco

Transf: P.M. ____ 19 ____ to Dept: PR Ward #: Bed # ____

Complaints: Vaginal bleeding

Diagnosis in full:

Healing lacerated wide at 2 o'clock and 10 o'clock hymen.

Results: Rec.:

Disposition: ü Disch:

ü Imprv:

Disd:

Unimprov:

Abcond: 3:45 P.M.

Died:

Transf Hosp. 5-12-73

Operation:

Anesthesia:

History written by:

APPROVED:

(SGD.) ESTIOCO

(unintelligible)

(Resident Physician)

Dept. Head"

The entry written in the above clinical record when Irene Dulay was admitted under the item "Complaints" reads: Vaginal Bleeding, and below this entry appears the Diagnosis - Healing lacerated wide at 2 o'clock and 10 o'clock hymen. Assuming that the victim was raped between 2 and 3 o'clock p.m., April 22, 1973 (the same day she was admitted in the hospital), then the lacerations of the hymen at 2 o'clock and 10 o'clock would not have been described and indicated to be Healing in the clinical case record. It would be described as "laceration fresh" or by similar words like "bloody or new lacerations." There is no instant formula, technique or process known to medical science or by human experience to hasten the healing of a lacerated hymen within three (3) hours or so after defloration.

Citing from the book, Legal Medicine by Pedro P. Solis, M.D., LL.B., Medico Legal Officer, National Bureau of Investigation, Department (now Ministry) of Justice, We have the following comment on:

"Healing time of laceration of the hymen:

Superficial laceration of the hymen may heal in two or three days.

More extensive tear may require longer time, usually seven to ten days.

Complicated types and those with intervening infection may cause delay in the healing depending upon the extent of the involvement of the surrounding tissue and the degree of infection. Complicated laceration may even require surgical intervention." (p. 302, underscoring supplied.)

Since there was found laceration, wide, at 2 o'clock and 10 o'clock of the hymen which was then already healing on April 22, 1973, it follows reasonably that the defloration occurred several days before, which may have happened when Irene Dulay took a week-long vacation to her hometown in Pugo, La Union (tsn, p. 10, June 27, 1975) and there is evidence that she had a suitor named Ferdinand Sarmiento who is from nearby Agoo, La Union. And when she returned to the house of her employer in San Fernando, La Union, she had already chest and stomach pains and a headache.

The written entries in the clinical case record, Exh. "2", showing the date of her admission in the hospital on April 22, 1973, her complaint of vaginal bleeding and the diagnosis of "Healing lacerated wide at 2 o'clock and 10 o'clock hymen" are prima facie evidence of the facts therein stated, the said entries having been made in official records by a public officer of the Philippines in the performance of his duty especially enjoined by law, which is that of a physician in a government hospital. (Rule 130, Sec. 38, Rules of Court). In the case at bar, Dr. Antonino Estioco was the admitting physician but unfortunately, he was not presented as a witness for the government.

In connection with Exhibit "2", there is one piece of damaging evidence which not only derogates the theory of the prosecution but also cannot be explained by the government, and that is the frank testimony of Dr. Fe Cayao herself, thus:

"Q - The question is: did you not discover through reading the clinical history of the patient that the woman was not complaining of alleged rape?

A - It was not indicated here that she was complaining of an alleged rape.

Q - There was not a single word in the clinical record of the victim that she was the victim of an alleged rape, is that correct?

A - Yes." (tsn, pp. 27-28, May 15, 1974)

2. From the same clinical case record, Exhibit "2", it appears clearly that the alleged victim, Irene Dulay, was having her menstrual period when she was supposedly raped for the Complaint indicated that she had vaginal bleeding. She herself admitted in her testimony that on April 22, 1973, she was having her menstruation. (tsn,

p. 9, June 27, 1975).

It is quite abnormal and unnatural, almost unheard of in human experience and behavior that a man would have sexual intercourse with a woman then having her menstrual period, as was the admitted condition of the complainant when she was allegedly abused by the accused. And because of this universal abhorrence, taboo and distaste to have sexual contact with a menstruating female and this is so however passionate and lustful the man may be unless he is depraved or demented, We cannot believe that the accused-appellant, a young fourth year college student of civil engineering studying in Baguio City, would break or violate such a taboo by drugging the complainant girl with the help of her sister and afterwards have sex relations with her in menstrual condition.

3. When the complainant was investigated by the police, she declared in her affidavit, Exhibit "5", the following answers to these questions:

"5. Q - Why are you in this office?

A - I came here with the purpose of giving my voluntary statement in connection with the incident that happened to me in the house of my employer and I want to file a formal complaint against the persons who offended me, sir.

6. Q - Who are those persons who offended you, if you know?

A - They are Joseph alias Jessie and Elizabeth both surnamed Leones, the son and daughter of Mr. Pepito Leones, my employer.

7. Q - When did that incident happened?

A - At about between the hours of 2:00 & 3:00 in the afternoon of April 22, 1973, sir.

8. Q - What did these Joseph and Elizabeth Leones do against you?

A - Because I was suffering headache at that time because it was the first day of my menstrual period, they were inviting me to go with them to Wallace and I told them that I have a headache then later they forced me to take in aspirin tablets, three (3) tablets then after a few seconds I begun to feel dizzy and halfconscious.

9. Q - Do you know if what you have forcibly taken and given by the two, Joseph and Elizabeth were really aspirin tablets?

A - I do not know, but they were white in color similar to aspirin tablets but after I have taken them I felt dizzy then unconscious.

10.Q- In what manner did Joseph Leones and Elizabeth Leones force you to take in the tablets?

A - At about that time and date I mentioned above, I was then lying on my bed in my room at their residence, then Jessie and Elizabeth came in. Joseph alias Jessie took hold of my throat with one hand and pressed it hard that I was almost choked up, his other hand held my both cheeks his thumb and forefinger pressed hard to forcibly open my mouth while Elizabeth held a spoon containing the three (3) tablets then I was told by them to swallow the pills. I could not resist so I swallowed the pills then later I felt dizzy as if the world was turning around."

Thus, it would appear from the above recorded evidence that the accused Joseph Leones and his sister Elizabeth, helped and conspired with each other in the commission of the crime of rape against the offended party, an assumption that is hardly believable for it would lead to the absurd conclusions that Elizabeth was a principal by cooperation and that both Joseph and Elizabeth had planned the rape for they conveniently provided themselves beforehand with the necessary drug.

It further appears in the record that the Philippine Constabulary in La Union did not believe the existence of rape when Felicidad Boado reported the incident (tsn, p. 25, June 18, 1974), which disbelief may reasonably be attributed to the unnatural and unusual version of the complainant that another of her own sex had conspired and confabulated in the commission of the alleged defilement.

4. The complainant, Irene Dulay, had declared in her affidavit, Exhibit "5", in answer to question No. 9 that after she had taken the tablets that were white in color similar to aspirin tablets, she felt dizzy, then unconscious. In her testimony at the trial, however, she testified that after she had taken the tablets, she felt dizzy and felt the removal of her panty and that when he went on top of her, he inserted his private parts into her private parts (tsn, pp. 6-7, June 27, 1975), but on cross-examination, she said that she became unconscious when Joseph Leones was already on top of her (tsn, p. 22, June 27, 1975). If she became unconscious when Leones was on top of her and yet she felt pain when he placed his private parts into hers, then this is incredible for how could she have known what was done to her and how she felt when she was already unconscious as admitted by her.

5. The record is replete with testimonies of the very witnesses of the prosecution itself revealing the irrational, if not immoral behavior and conduct of the complainant which cuts deep into the morality, character and credibility of the complaining witness. To cite a few of her immoral acts, when the police came to visit her, Irene Dulay took hold of the penis of the policeman (Testimony of Felicidad Boado, tsn, p. 20, June 18, 1974). Whenever she sees a man, she goes after him and takes hold of his hand and places it in her private part (Testimony of Leonida Dulay, p. 5, tsn, Sept. 20, 1974). Sometimes she is seated, sometimes she is standing and there are moments that she goes around and whenever she sees a man, she calls for him and says "darling Jessie" (Cross-examination of Leonida Dulay, tsn, p. 14, Sept. 20, 1974). She even said "have sexual intercourse with me," making particular mention of the person who wanted to do that to her as Joseph Leones (Cross-examination of Leonida Dulay, tsn, pp. 27-28, Sept. 20, 1974). There are times when she gets a pillow and imitates the sexual act (tsn, p. 29, Sept. 20, 1974). There are moments when she takes hold of a pillow, embraces it, and makes movements imitating the sexual act (tsn, Testimony of Leonida Dulay, p. 5, Sept. 20, 1974).

6. The circumstances of persons, time and place attendant in the commission of the crime do not build up the case for the People. On the contrary, We find facts and circumstances which contradict and contravene the theory of the prosecution, rendering it highly improbable and questionable. Thus, the room of the complainant where the alleged rape was committed was at the ground floor of the house where her employer lives with his family and maintains a canteen at the premises, the room being very near the washing place and had a door with only wooden jalousies. There were several persons present in the house at the time of the alleged rape and they were Evelyn Estigoy, the secretary of Natividad Leones, the cook Inocencia Gangad and her daughter, Marites. With the presence of these persons at the premises and the complainant's room was not secluded nor completely closed, the opportunity to commit the rape is hardly present. More than that, the alleged time being between 2:00 o'clock and 3:00 o'clock in the afternoon and with the supposed attendance of the perpetrator's elder sister, Elizabeth, the element of secrecy had been totally ignored or disregarded which is quite unbelievable and incredible in such a crime as rape.

Indeed, rape is a most detestable crime. It should be severely and impartially punished. But a rape charge is easy to make, hard to prove and harder to defend by the party accused, though innocent. Experience has shown that unfounded charges of rape have frequently been preferred by women actuated by some sinister, ulterior or undisclosed motive. Convictions for such crime should not be sustained without clear and convincing proof of guilt. On more than one occasion, it has been pointed out that in crimes against chastity, the testimony of the injured woman should not be received with precipitate credulity. When the conviction depends on any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of utmost value in judging matters of this kind. (Cornelio Flores,

26 Phil. 262, 268; Ignacio Landicho, 8 ACR 580; Rafael Lacson, CA 53 O.G. 1823; Francisco Salvador, CA 52 O.G. 7290; Lago, CA 45 O.G. 1356; Barbo, 56 SCRA 459; Bay, 27 Phil. 495; Pantaleon Ramos, 35 Phil. 671; Brocal, CA 36 O.G. 857; Topacio, CA 36 O.G. 1358; Fernando Fausto, 51 Phil. 852, cited in Aquino, The Revised Penal Code, 1977 Ed., Vol. III, pp. 1679-1680).

After carefully analyzing and weighing the evidence presented by the prosecution in the light of the legal principles above outlined and now well-established in Our jurisprudence and guided by a little insight into human nature, We are persuaded and convinced that the guilt of the accused has not been proven beyond reasonable doubt. That moral certainty or degree of proof which produces conviction in an unprejudiced mind (Rule 133, Section 2, Rules of Court) has not been established by the prosecution. The constitutional mandate that the accused is presumed innocent must prevail and, therefore, the accused-appellant, Joseph Leones, is entitled to an acquittal.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the judgment of conviction is hereby REVERSED and the accused Joseph Leones y Ducusin is ACQUITTED of the crime charged.

Costs de oficio.

SO ORDERED.

Barredo, Aquino, Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.
De Castro, J., no part.

[1] pp. 1-4, Appellee's Brief, p. 106, Rollo.

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