

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FABIAN QUILO, DEFENDANT-APPELLANT.

G.R. No. L-47148. March 16, 1988

Ponente: FERNAN, J.

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FERNAN, J.:

Fabian Quilo appeals from the decision dated July 26, 1977 of the then Court of First Instance of Misamis Occidental, 16th Judicial District, Branch III, Oroquieta City, finding him guilty beyond reasonable doubt of the crime of RAPE committed against one Floriana Malinao and sentencing him to reclusion perpetua with all the accessory penalties provided for by law and to pay the costs.[1]

The criminal complaint against accused-appellant Fabian Quilo was filed before the Municipal Court of Sinacaban, Misamis Occidental on July 11, 1973[2] and the warrant for his arrest was issued on the same day.[3] Accused-appellant, however, could not be located. Thus, on March 29, 1974, Municipal Judge Pedro Suan ordered the case sent to the archives, without prejudice to its subsequent prosecution upon accused's apprehension.[4]

Almost two [2] years later, or on March 18, 1976, accused-appellant gave himself up to a certain 1st Lt. Gudofredo Ereno. He disclaimed knowledge of the criminal complaint against him, saying he was informed about it by his mother only in the early part of the same month.

After accused-appellant had posted bail and waived his right to a preliminary investigation, the municipal court forwarded the case to the then Court of First Instance of Misamis Occidental[5] before which the proper information was filed by the Assistant Provincial Fiscal on May 6, 1976.[6]

On a plea of "Not Guilty" entered by accused-appellant at arraignment, the case proceeded to trial. The prosecution's theory as testified to by its witnesses [Floriana Malinao, the complaining witness, her father, Constancio Malinao, her sister Federica Malinao, Dr. Jose B. Conde, the examining physician and Juanito Boligor, the Station Commander, INP, Sinacaban, Misamis Occidental] and supported by its real and documentary evidence, is as follows:

The complainant, Floriana Malinao, 17, single, was living with her father Constancio Malinao, a farmer and copra buyer, and her eight-year-old sister Federica Malinao at the first floor of the house of Barangay Captain Sulpicio Pangan located in San Isidro Bajo, Sinacaban, Misamis Occidental. The rented premises was being used as a sari-sari store and copra warehouse.

On July 5, 1973, Constancio Malinao left for Ozamis City to deliver copra, leaving Floriana and Federica to tend the store. He was not able to return for the night as the copra was not weighed. He spent the night in his other house in Caraghanan, Sinacaban, Misamis Occidental, which was nearer Ozamis City.[7]

In the meantime, that day being a market day, Floriana and her sister went to the barrio market at noon to sell beverage and snacks. While there, Floriana noticed accused-appellant playing basketball in the court near the

market. At 3 o'clock in the afternoon, Floriana and her sister proceeded back to their sari-sari store where they attended to some customers who were taking shelter from the rain. After the customers left at around 8 o'clock in the evening, Floriana closed the store, prepared and ate her supper. Federica, who had her supper earlier, was asleep at that time.[8]

After supper, Floriana washed the dishes and while opening the kitchen door to throw the waste, accused-appellant appeared, holding a hunting knife and warning her not to shout. Despite the warning, she was able to shout once, but accused-appellant, who had then entered the kitchen, held her by the right shoulder. She struggled to free herself from his hold and in the process bumped herself against the wall, hurting her left shoulder. Accused-appellant covered her mouth with his hand while his other hand was at her back. When she attempted to shout again, accused-appellant boxed her at the pit of her stomach, causing her to lose consciousness. Before completely blacking out, she sensed accused-appellant carrying her out of the kitchen. When she regained consciousness, she found herself lying on the field some 36 meters away from the house, with her panties gone, and her pants crumpled at her feet. She felt very tired and had pains in her legs and private parts.[9]

She was able to put on her pants[10] and to go back to the house, where feeling something oozing out of her vagina, she lighted a lamp and found out that it was blood. She also noticed that her pants were torn and stained with blood and mud.[11] Her pink blouse[12] had mudstains at the upper right shoulder, lower back and right sleeve. She woke up her sister and told her what happened. As she was crying, her sister also cried. She was not able to sleep that evening.[13]

In the morning, her sister found on the kitchen floor the hunting knife which accused-appellant used to threaten her. After some time, Porfiria Pangan, wife of Barrio Captain Sulpicio Pangan, came down to inquire why Floriana had not opened the store. In reply, Floriana related what transpired the night before. Mrs. Pangan reacted immediately by sending for her husband; who, upon arrival, investigated Floriana about the incident. Thereafter, Sulpicio Pangan went to fetch Constancio. When her father arrived at around one o'clock in the afternoon, Floriana recounted what happened. Constancio cried out of pity and indignation.[14]

Constancio then asked Sulpicio Pangan to write a letter to Fabian Quilo, requesting him and his parents to come to the store, but only the father of the accused-appellant came to inform him that he [the father] had not seen the accused-appellant the entire night.[15]

At around 4:30 o'clock in the afternoon, Constancio Malinao reported the incident to the police[16] and thereafter brought Floriana to the Misamis Occidental Provincial Hospital in Oroquieta City for examination.[17] The result of the examination conducted by Dr. Jose Conde is reflected in the medical certificate[18] issued therefor, as follows:

"VAGINAL FINDINGS:

= VAGINAL CANAL EASILY ADMITS INDEX FINGER; ADMITS SNUGLY INDEX AND MIDDLE FINGER=

= THERE IS EVIDENCE OF OLD HEALED LACERATION AT 9 O'CLOCK AND 3 O'CLOCK WITH SLIGHT BLEEDING ON EXAMINATION=

= SPECIMEN TAKEN FROM VAGINAL CANAL WAS NEGATIVE FOR SPERMATOZOA BUT WITH NUMEROUS RBC=

"EXTERNAL PHYSICAL FINDINGS:

= THERE IS CONTUSION AT THE RIGHT INNER THIGH=

= CONTUSION AT LEFT LATERAL THIGH, DISTAL=

= LINEAR CONTUSION AT LEFT LATERAL THIGH, PROXIMAL=

= LINEAR ABRASION, LEFT SHOULDER REGION=

FURTHER NOTE:

HAD MENSTRUATION LAST JUNE 23, 1973, BUT [At] TIME OF EXAMINATION, VICTIM WAS BLEEDING FROM CERVICAL OS [sic] ORIGIN."[19]

On July 7, 1973, Chief of Police Juanito Boligor and one Pat. Vapor conducted an ocular inspection of the spot where the alleged rape took place. There was no sign of struggle but there were two [2] knee marks and the grass were pressed to the ground. They measured the distance between the house and said spot to be 36 meters. On Boligor's advice, Floriana submitted to his office on July 9, 1973 the blouse and pants she was wearing at the time of the incident as well as the hunting knife used by the accused-appellant, which latter item was not, however, turned over to the court.[20]

Thereafter, the statements of Floriana, Cons-tancio and Sulpicio Pangan were taken down. The criminal complaint was drafted and signed by the offended party.

During the time that accused had not been apprehended, both Constancio and Floriana were approached on several occasions by his relatives for an amicable settlement of the case. This offer of settlement was reiterated during the course of the trial on December 16, 1976 at the house of Atty. Galon, the private prosecutor.[21]

The defense witnesses, namely accused-appellant Fabian Quilo, his friend Bonifacio Salon, his sister-in-law Maria Quilo, Barrio Captain Sulpicio Pangan and Numeriano Mariquit, presented a completely different version, thus:

Accused-appellant and the complainant were sweethearts. Fabian started courting Floriana in March 1973 and was accepted a month later on April 30, 1973. On July 5, 1973, he met complainant at the barrio market and was told to go to the latter's house. He did so at 6 o'clock in the evening in the company of Bonifacio Salon. After having a drink with the latter, he went to talk with the complainant on a bed inside the store. His companion remained outside with the other persons drinking in the store. At about 10 o'clock in the evening, the persons who were drinking in the store left. Only appellant and his companion remained. With music from a transistorized radio, accused-appellant and complainant practised modern dances. After an hour, accused-appellant and his companion left the store, but they parted at some distance from the store. Accused-appellant told Bonifacio Salon that he would pass the other way leading to his [Quilo's] brother's house where he had decided to spend the night. Actually, accused-appellant returned to complainant's house as he had told her that he was coming back.

He entered the house through the kitchen door which was left open by the complainant. In the kitchen, accused-appellant immediately embraced and kissed her. Then, he led her to the store where he continued to kiss and embrace her. He also touched some parts of complainant's body, including her private parts. He proceeded to pull down her panties and brought her to bed. However, as Federica, Floriana's sister was already on the bed, he pulled the mat and laid it in the supposed dining room near the kitchen. He started kissing Floriana again, at the same time, slowly putting her down on the mat. He then removed his trousers and thereafter succeeded in having sexual intercourse with the complainant. After the act, he noticed Floriana crying. To mollify her, he said that he would come back with his parents the following morning to propose marriage. He then proceeded home.

He did not return to complainant's house as promised because in the meantime he had doubts as to his financial readiness to support a wife and family. At 2 o'clock in the afternoon of July 6, 1973, his mother received from

Barrio Councilor Maria Quilo, a sister-in-law, a letter signed by Sulpicio Pangan. The letter[22] was written in the Visayan dialect and translated as follows:

"July 6, 1973

Mr. Vian Quilo

Ben come to the house right now because somebody wants to see you.

I hope you won't fail to come here and rest assured nothing will happen to you as I promise.

And bring along with you your father and mother."[23]

When asked by his parents the meaning of the summon, he told them that he had sexual intercourse with Floriana the night before and that the letter was sent so that he would marry her. His parents inquired whether he was ready to marry and he answered in the negative.

That same afternoon, he left the barrio out of fear for his life as he gathered information from Maria Quilo that Constancio Malinao, who is an ex-convict from Muntinlupa, was mad at him. He went to the house of his brother's friend in Cebu where he stayed for a week. Then said friend brought him to Oslob.[24] He stayed there for three [3] months, helping the friend's father in the household chores. Thereafter, he applied for a job and was accepted by the Sentinel Security Agency. He was assigned to the San Miguel Corporation offices in Mandaue City. After three [3] months, he was transferred to Cebu City.

In the first week of March, 1976, he received a wire from his mother requesting him to go home as his father was sick. He wrote his mother back and it was in reply to his letter that his mother informed him about the complaint for rape against him. He went home and thereafter turned himself in to 1st Lt. Ereno.[25] He did not know of the offers to settle made by hit relatives, neither did he approve of the settlement being negotiated on December 26, 1976, which was the idea of Numeriano Mariquit who was a relative by affinity of the complainant.[26]

Faced with these conflicting versions, the trial court accorded credence to the prosecution's account and accordingly held accused-appellant guilty of the crime charged. Hence, this appeal, accused-appellant maintaining that the trial court erred in believing the prosecution's theory and in finding that he impliedly admitted his guilt, considering that:

1]

Floriana Malinao testified that appellant used a knife to threaten her; that she struggled very hard with him and that accused covered her mouth. Yet, the doctor who examined her did not find any injury, swelling or contusion on her mouth and face nor any laceration, scratch, contusion on her main body or any unnatural finding on her pubic area. She likewise did not receive any injury, even a minor one from the knife allegedly used by the accused-appellant.

2]

Her pants were torn, but she did not sustain injuries, swellings or lacerations on the skin directly beneath said tearings; which tend to show that said exhibit was tampered with, especially as it was not immediately delivered to the police.

3]

The spot where the incident allegedly took place was a recently harrowed field according to the testimony of Sulpicio Pangan. As it was raining very hard on the day of the incident, the place would be very muddy. Yet, the pants and blouse of complainant contained only a few mudstains as if deliberately scattered in strategic places. Besides, why should accused-appellant perform the sexual act in the field when the kitchen could very well serve the purpose?

4]

The existence of the relationship between accused-appellant and complainant was corroborated by Maria Quilo and Sulpicio Pangan. Moreover, the latter in effect negated the fact of rape in his testimony when he said that early in the morning after the alleged incident, he saw complainant washing her face and hands from a barrel of rain water. She was not crying and she did not tell him anything.

5]

Numeriano Mariquit admitted that the proposed settlement was his own idea. Hence, the accused-appellant's presence during the negotiation cannot be considered as an admission of guilt. His going with Mariquit was prompted merely by the desire to avoid the unnecessary inconvenience of litigation.

After a thorough review of the records, We find no cogent reasons to overturn the probative value given by the trial court to the prosecution's evidence nor to reverse, alter, amend or otherwise modify the conclusion formed therefrom.

The absence of any facial and/or knife-inflicted injuries to complainant does not disprove her assertion that the act in question was committed through force and intimidation. The struggle put up by complainant could very well affect the degree of firmness and angle of accused-appellant's hold over her mouth as well as prevented the latter from clamping his hand over the same portions of complainant's mouth and face for such length of time as would result in their swelling or contusion. The same act of struggling necessitated the use by accused-appellant of both hands. It was therefore not unlikely that in the process, he dropped the knife on the kitchen floor where it was subsequently found by Federica.

Neither could the absence of injuries on complainant's skin directly beneath the torn portion of her pants improve accused-appellant's case. There is no immutable law in physical science which says that one should always sustain injuries under such circumstances, particularly so on the region of the stomach where marks of force are not usually visible.[27]

Indeed, the importance attached by accused-appellant to the lack of injuries to complainant other than those found by the examining physician does not belie rape.[28] Moreover, it cannot override the more eloquent proofs of force having been employed, consisting in the tell-tale laceration in the hymen and bleeding in the vaginal canal of the offended party, the contusions at her thighs and abrasion at her left shoulder, as well as the ripped, bloodied and soiled pants and blouse.

Accused-appellant's conclusion that Exh. "D", complainant's pants, had been tampered with, is based on mere conjectures and speculation. The tardiness in its submission to the police was satisfactorily explained by complainant thus:

"ATTY. ACOSTA ON CROSS:

Q:

According to the record, your affidavit was taken on July 9, 1973 at 9:00 o'clock in the morning, was this the date when Exhibits 'C' and 'D' were brought to the police authorities?

A:

Yes, sir.

Q:

Did you not declare during the direct examination that the police authorities went to the scene of the alleged incident on July 7, 1973?

A:

Yes, sir. I have stated that.

Q:

You did not deliver this t-shirt, Exh. 'C' and the pants Exh. 'D' to the police authorities, when they went to your place?

A:

Perhaps it was not because I was not aware that [they] will be exhibited and as a matter of fact, I was about to wash it."[29]

It has likewise been established per testimony of Chief of Police Juanito Boligor on the result of his ocular inspection of the field that there were bushes in the alleged site of the incident, and that "the bushes were already pressed to the ground".[30] This, to our mind, accounts for the mudstains being where they were for the bushes could have prevented direct contact between the soil and other portions of complainant's clothes.

The reason why accused-appellant should choose to consummate his lascivious desire in the field rather than in the kitchen is readily discernible. There were people sleeping in the house, Federica on the ground floor and the Sulpicio Pangan family on the second floor, who would awaken to Floriana's cries for help should she regain consciousness while being ravished. It was to avoid such eventuality and to allow accused-appellant to perpetrate the rape with impunity that he brought Floriana out of the house.

It is not true, as claimed by accused-appellant, that the existence of an amorous relationship between him and complainant was corroborated by Maria Quilo and Sulpicio Pangan. The testimony of Maria Quilo on the matter is as follows:

"Q: How did you know that Fabian Quilo and Floriana Malinao were sweethearts?

A: Because Fabian Quilo told me about that, that they were sweethearts."[31]

The supposed knowledge of Maria Quilo about the relationship was not of her own personal knowledge, but was in the nature of hearsay evidence. Aside from the alleged bare statement of Fabian Quilo, she did not indicate how she came to form the impression that such relationship existed.

On the other hand, Sulpicio Pangan merely testified seeing accused-appellant at the store about three to four times a week, buying cigarettes and telling stories with Floriana, and the latter asking him whether Fabian Quilo would make a good husband.[32] These, however, do not support the conclusion that the two were sweethearts, but on the contrary corroborates the claim of Floriana that she was being courted by accused-appellant.[33] Thus, her question to Sulpicio Pangan could be her way of finding out if accused-appellant was worthy of her love.

Besides, any relationship that may have been hinted at by Sulpicio Pangan's testimony was totally erased by his subsequent declaration that "she [Floriana] told me that she was abused by Fabian Quilo".[34] That Sulpicio Pangan saw Floriana earlier and the latter did not say anything to him does not detract from the credibility of Floriana's allegation because it has not been shown that when Sulpicio saw Floriana, the latter saw him too.

As correctly observed by the Solicitor General:

"x x x If it is true that complainant reciprocated his love and that of her own free will she gave up her precious virginity, there was absolutely no reason for her to reveal in tears to her sister, to Barangay Captain Pangan and his wife, and most of all, to her father what appellant did, since these persons would not have known of the incident as there were no eye-witnesses to the act. Had the whole matter been the fruit of her love for appellant, Floriana would have treasured the occurrence as her most precious secret to be guarded in the innermost recesses of her heart. Then, upon the failure of appellant to make good his promise of marriage, she would, without making a scandal, seek appellant personally and demand that he keep his promise. If indeed they engaged in the sexual act out of mutual passion, why would she file a rape case against him, knowing that the truth would eventually come out, and thus risk being exposed to shame and disgrace if she was found to be telling a lie. Truly, the fact that she married someone else less than two years after the incident indicates that she had no intention whatsoever to marry the appellant. Rather, it is her honest desire to bring her offender to justice that prompted her to persist in the prosecution of this case even when she is already a married woman, permitting herself to be the subject of a public trial and exposing not only herself but her husband to embarrassment and ridicule." [35]

Equally inconsistent with the supposed amorous relationship was accused-appellant's actions after the alleged incident. He left the barrio and stayed away therefrom for three [3] years without communicating with his relatives for fear of being traced.[36] We do not believe that he would be in such a state of fear for his life if he did not commit a crime as grave and serious as that charged, considering the assurance given him by Sulpicio Pangan in the letter Exh. "1" that no harm would befall him. And certainly, if Floriana were truly his sweetheart, he would have, after a reasonable length of time, tried to communicate with her to explain his sudden disappearance. In the case of *People v. Cabradilla*, 133 SCRA 413, We considered the flight of the accused and his sojourn in far places after the alleged crime as circumstances strongly militating against his claim that he and the offended party were sweethearts and that the sexual intercourse complained of was voluntary. Such ruling should apply with full force to the case at bar.

No error was committed by the trial court in interpreting accused-appellant's presence at the negotiations for the settlement of the case on December 26, 1976 at the house of Atty. Galon as an implied admission of guilt. While Numeriano Mariquit testified that it was he who thought of and initiated the settlement, accused-appellant's failure to prevent him from implementing the same and his presence thereat demonstrated his consent to and approval of the same. Well-settled is the rule that in criminal cases which are not allowed by law to be compromised, an offer therefor made by the accused is admissible as proof of an implied admission of guilt.[37] In any event, his pretended desire to avoid the inconvenience of a court litigation came a little too late. He could

have done this right after the incident at bar when summoned by the Barrio Captain, or after some time when tempers had cooled down.

WHEREFORE, the appealed decision is hereby AFFIRMED in toto. Costs against accused-appellant.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

- [1] Decision, p. 28, Rollo
- [2] p. 1, Original Record
- [3] p. 10, Ibid
- [4] p. 12, Ibid
- [5] p. 49, Ibid
- [6] p. 52, Ibid
- [7] tsn, August 20, 1976, pp. 37-39
- [8] tsn, February 11, 1977, pp. 204-207
- [9] tsn, Ibid, pp. 207-214
- [10] Exh. "D"
- [11] Exhs. "D-2" and "D-4", respectively
- [12] Exh. "C"
- [13] Ibid, pp. 214-218
- [14] Ibid, pp. 218-223
- [15] tsn, August 20, 1976, pp. 60-62
- [16] Exh. "A", p. 166, Original Records
- [17] tsn, August 20, 1976, pp. 42-44
- [18] Exh. "E"
- [19] p. 2, Original Records
- [20] tsn, Feb. 11, 1977, pp. 175-181; 198
- [21] tsn, August 20, 1976, pp. 50-51; February 11, 1976, pp. 228-235
- [22] Exh. "1"
- [23] Exh. "1-A", p. 221, Original Records
- [24] tsn, July 7, 1977, pp. 111-120
- [25] tsn, July 18, 1977, pp. 272-274

[26] tsn, July 12, 1977, pp. 144-145; and July 18, 1977, pp. 289-291

[27] *People v. Renojo*, 132 SCRA 365

[28] *People v. Ludovice*, 128 SCRA 361

[29] tsn, August 20, 1976, p. 91

[30] tsn, February 11, 1977, p. 181

[31] tsn, July 12, 1977, p. 131

[32] tsn, July 12, 1977, pp. 192-193

[33] tsn, March 18, 1977, p. 267

[34] tsn, July 12, 1977, p. 136

[35] pp. 8-9, Brief for the Appellee, p. 98, Rollo

[36] tsn, July 18, 1977, p. 295

[37] Sec. 24, Rule 130, Rules of Court

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