

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRISANTO BADERES Y MAPISA ALIAS “BOY”; ENRIQUE MISION Y CATANGHAL ALIAS “HENRY MISION”; ENRICO PIÑACATE Y GALANG ALIAS “RICO P...

G.R. No. L-38413. August 27, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

This is an appeal from the decision dated February 19, 1974 of the then Court of First Instance of Rizal, Branch XXVI, Pasig, Rizal, finding the defendant-appellant Crisanto Baderes y Mapisa* guilty of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the complaining victim in the sum of Five Thousand Pesos [P5,000.00] by way of exemplary damages, and to pay the costs.

The appeal rests on the issue of credibility as the story of the complaining witness, 13-year-old Irene Añonuevo that she was raped was contradicted by the defendant-appellant, 17-year-old Crisanto Baderes, who strongly asserted that the former being his sweetheart willingly copulated with him.

The prosecution's evidence is as follows:

"On April 19, 1973, Irene Anonuevo, a 13-year-old student residing at Ilaya Baranca, Mandaluyong, Rizal, was watching the passion play at Barrio Pineda, Pasig, Rizal [t.s.n., pp. 5-6, May 25, 1973]. At about midnight, when the passion play ended, Irene noticed that her companion, Evelyn Alcantara, was not with her anymore. She started looking for Evelyn and when she was not able to find her, she decided to go home. While walking along a road at Purok No. 4 in Barrio Pineda, Pasig, Rizal, she became apprehensive since she was alone and she had a long way to reach her house. She then decided to go to the house of one 'Aling Ata' her mother's 'kumare' residing in the 'same barrio of Pineda [t.s.n., pp. 6-7, id.].

"On her way to the house of 'Aling Ata', however, a person suddenly pulled her arm and poked a sharp object at Irene's right side. The person, whom she later recognized as appellant Crisanto Baderes, told Irene: 'Pag ikaw ay lalaban, lalagyan kita ng gripo sa tagiliran (t.s.n., pp. 7-9, id.)'. Apprehensive of her safety, Irene did not make any outcry. Under continued threats she was taken to an alley and brought to a house in the same Purok No. 4, Barrio Pineda. Upon reaching the door of the house, the appellant called out 'Henry, open the door, I have somebody with me' [t.s.n., pp. 9-10, id.] When the door was opened, she was taken inside the house where she saw three companions of the accused whom she did not initially recognize but when the light in the room was put on, she identified them as Henry Mision, Omy and Rico Galang. Irene was brought inside a room where she was immediately made to lie down on the cement floor. [t.s.n., pp.10-12, id.]

"Appellant took off his clothes while his three companions held Irene by her shoulder and legs, at the same time stripping her of her clothes. She was lying on the floor with a sharp bladed instrument poked at her side. While she was in such a helpless position, the appellant placed himself on top of Irene. Appellant, with the help of his companions, started kissing Irene and fondling her breast.

"After sometime, appellant was able to have carnal knowledge of Irene who, because of the pain that she felt, cried and became pale [t.s.n., pp. 12-18, id.]. Thereafter, the appellant and his companions threatened Irene not to make any complaint to anyone [t.s.n., p. 19, id.] At about 4 o'clock in the morning, Irene was led out of the house. On their way out, appellant repeated his threats that she would be harmed if she reports the matters to the authorities [t.s.n., pp. 20-21, id.]

"Immediately upon her arrival at her house, however, Irene reported the incident to her brother, and later on the same day, she was taken to the NBI where she was examined by Dr. Salvador, a medico-legal officer of the NBI. [t.s.n., pp. 21-22, id.] Results of the examination disclose the following:

'Normally developed, fairly nourished, conscious, coherent, cooperative, ambulatory subject.

'Breasts, fully developed, hemispherical and soft. Arcolae (sic) brown, 3.0 cm. in diameter. Nipples, dark brown, protruding, 6.0 cm. in diameter.

'No evident sign of extra-genital physical injury noted on the body of the subject.

'Pubic hairs, fully grown and moderate. Labia majora gaping posteriorly. Labia minora, coaptated. Fourchette, tense. Vestibular mucosa, pinkish, hymen, moderately wide, with contused hymenal edges from 5:00 o'clock and 7:00 o'clock positions and a deep, fresh laceration at 9:00 o'clock position, corresponding to the face of a watch, edges raw and bleeds on slight manipulations. Hymenal orifice, originally annular and admits a tube 2.8 cm. in diameter with moderate resistance. Regosities (sic), prominent and vaginal walls, tight.' **

"After the examination at the NBI, Irene and her brother, Romeo, proceeded to Metrocom South Sector where her statement was taken by constabulary authorities. The PC, however, referred Irene to Pasig, Police Department where, upon investigation, she gave another statement reiterating her statement given to the PC. [t.s.n., pp. 7-8, June 4, 1973]".[1]

The defense's evidence, on the other hand, is as follows:

"On April 19, 1973, at about 11:00 o'clock in the evening, defendant-appellant Crisanto Baderes, nicknamed 'Boy Tepuvet', 17 years old, single, and a laborer by occupation, with his friend Raymundo Castillo, nicknamed 'Raymund', 20 years old, also single, were watching the 'sinakulo' or passion play in the vernacular, in Barrio Pineda, Pasig, Rizal. [TSN, July 31, 1973, pp. 12-14; TSN, July 12, 1993, pp. 95-97]

"Defendant-appellant felt a tap on his shoulder and turning back, he saw the complainant Irene Anonuevo, 13 years of age, single and student, who inquired from him whether he had seen Evelyn Alcantara and her companions. After telling the complainant that he had not seen Evelyn, Irene requested him to take her home. Defendant-appellant and Raymund agreed and as they were heading towards Ilaya, Barrio Barangka, Mandaluyong, Rizal, where Irene lives, they passed by the basketball court, also in Barrio Pineda, and saw another friend, Rosendo Laron, nicknamed 'Boyet', 20 years old and single who joined their group. [TSN of July 13, 1973, pp. 14-18 and pp. 2-7; TSN of July 12, 1973, pp. 97-101]

"While their group was nearing the Republic Flour Mills, the siren signalling 'curfew' blew and they were afraid to proceed for fear of being apprehended for violating the 'curfew'. Raymund begged off and told his companions that he was separating from the group to go home. But as he looked back shortly thereafter he saw that his companions had also turned back and so their group headed back to Pineda. When they reached a dead-end street called 'Puto', Raymund separated from the group and went home. Shortly thereafter, Rosendo Laron also separated from his companions and went home. (TSN of July 12, 1973, pp. 100-104; TSN of July 13, 1973, pp. 7-10 and pp. 19-10]

"Defendant-appellant, who had been courting the complainant even before that occasion, pressed his courtship even while their group was taking Irene home. Irene, on the other hand, had a soft spot for the defendant-appellant. She had once confided to her friend and gangmate, Evelyn Alcantara, that she had a

crush' on the defendant-appellant. The latter's courtship was thus requitted. (TSN of July 13, 1973, pp. 20-21; TSN of July 12, 1973, pp. 53-54]

"Thus, the two found themselves alone in the dead of the night and in a deserted place. They went to the 'bundok' which is an uninhabited place filled with cogon grass where women questionable character used to be brought and they decided to spend the night there. They embraced and kissed each other, and finally made love. There end on that occasion, by the defendant-appellant's own admission: 'nakuha ko po ang kanyang pagkababae'. [TSN of July 13, 1973, pp. 21-23]

"At about 2:00 o'clock in the morning they left the place. Irene had asked the defendant-appellant to take her to his home if he really loved her. But home to the defendant-appellant at that time was the residence of his friend Henry Mision at Barrio Pineda where he had been sleeping for more than a month before. [TSN of July 13, 1973, pp. 23-25]

"On reaching the Mision residence, they found the door closed. Leaving the complainant there the defendant-appellant passed through the back door of the house close to the river. Once inside the house, he woke up Henry because he could not switch on the light due to some mechanical defect. Henry woke up and put on the light. He saw defendant-appellant who told him that he had a girl companion with him and requested that they be allowed to spend the night there. [TSN of July 13, 1973, pp. 25-29; TSN of July 25, 1973, pp. 11-13]

"At first Henry Mision refused. 'I told them to leave because my parents might get angry.' However, defendant-appellant told him that he had already 'nagalaw' (had already had sexual intercourse with) the complainant. Thinking that the two had eloped. Henry relented and allowed them to stay in his father's office. [TSN of July 25, 1973, pp. 13-16]

"Defendant-appellant borrowed the mat on which Henry Mision and his cousins Omy [Romeo Yumo] and Rico [Enrico Pinacate] were sleeping. So Henry woke up his cousins and took away the mat and gave it to the defendant-appellant. Defendant-appellant and the complainant proceeded to the office of Henry's father. After closing the door, the light inside the said office was put out. Henry and his two cousins, in turn, continued to sleep on the sofa. [TSN of July 13, 1973, pp. 28-29; TSN of July 25, 1973, pp. 17-18]

"Inside the office, defendant-appellant spread the mat on the floor and Irene lay down on it. Defendant-appellant took off his polo shirt and lay down beside her. Then they embraced each other and 'because of the length of time that we were close together, something happened again' and defendant-appellant 'was able to get her womanhood again'. Of course, before these things happened defendant-appellant 'promised her (the complainant) that I would marry her.' [TSN of July 13, 1973, pp. 29-32]

"Defendant-appellant and the complainant stayed in the said place until four o'clock the following morning because 'that was my first opportunity to be able to take her home . . . because the curfew ends on that hour'. He woke up Henry Mision and told him that they were leaving. After they left, Henry went back to sleep. [TSN of July 13, 1973, pp. 32-33; TSN of July 15, 1973, pp. 19-20]

"From the Mision residence, they walked towards Barangka, Mandaluyong, Rizal, passing by many houses. There were already people awake and stores open by that time. No outcry was ever made by the complainant; at no instance did she attempt to escape or flee. [TSN of July 13, 1973, pp. 33-35]

"When they reached the place close to Irene's home, at complainant's behest defendant-appellant left her. However defendant-appellant was assured by Irene that she would go back to Pineda sometime that day. True enough, defendant-appellant saw her again in Pineda at about seven o'clock in the morning watching the 'penitensiya' [flagellation] (sic). [TSN of July 13, 1973, pp. 35-36]

"At about 9:00 o'clock in the morning of that day, complainant came to the house of Evelyn Alacantara and told her: "INANO AKO NI BOY" in the 'bundok'. Evelyn asked her who is that 'Boy' and the complainant

answered: "Boy titigan mo ako", whom she understood to be the defendant-appellant. Complainant never told Evelyn that she was forced or raped by 'Boy'. In fact Evelyn's impression that this thing happened with complainant's consent for 'Boy', as told by the complainant herself to her, is 'her crush', meaning that 'she likes him'. [TSN of July 12, 1973, pp. 49-54]" [2]

The lower court sustained the prosecution's theory citing the following reasons:

- a] Said theory is properly corroborated and confirmed by the physical facts and other circumstances;
- b] Complainant's testimony in court is substantially the same as the writ-ten statement she has given to the police;
- c] Her testimony is strongly sustained and fortified by the findings of Dr. Nieto Salvador, NBI Medico Legal Officer; and,
- d] There appears to be no improper motive for the complainant to tes-tify falsely against the appellant and his co-accused.

The physical facts adverted to by the lower court as corroborative of the prose-cution's theory is undoubtedly the medico-legal findings of Dr. Nieto Salvador. Upon closer scrutiny, however, We find that said findings do not support nor confirm the charge that rape was committed by the appellant against the com-plainant. The hymenal lacerations reported therein and the conclusion that "she could have had sexual intercourse with a man on or about the alleged date of commission" do not establish rape as the same findings and conclusion are like-wise consistent with the defense's theory that coitus took place with the consent of the com-plainant. Rather than substantiate the prosecu-tion's theory of rape, the finding that there were no evident signs of extragenital injuries, on the other hand, tends to lend more credence to appellant's claim of the absence of a struggle or the lack of physical force employed, and to negate the complainant's testimony that when she "tried to move, he [appellant] slapped me." [3] Moreover, the finding that complainant was a "conscious, coherent, cooperative and ambulatory subject" completely runs counter to the usual condition observed of recent rape victims, who by reason of the trauma just experienced, are in shock, incoherent and nervous.

Aside from the medical report which We do not find to be corroborative of the prosecution's theory, no other evidence or circumstances were presented by the prosecution to substantiate com-plainant's testimony. The other four witnesses for the prosecution, namely, Dr. Nieto Salvador, medico-legal officer of the NBI, Romeo Añonuevo, the brother of the complainant, and Sgt. Montefalcon and Pat. Galang of the Pasig Police Depart-ment, did not and could not have any personal knowledge of the perpetration of the offense imputed to the appellant.

Following then the well-settled rule that in order that the defendant may be convicted upon the testimony of the complainant alone, such testimony must bear the stamp of absolute truth and candor [4] and must be impeccable and ring true throughout, [5] an examination of complainant's testimony is imperative.

Complainant testified that when the passion play ended, and she could not find her companion, Evelyn Alcantara, she decided to walk home alone. She, however, changed her mind and decided to spend the night in the house of Aling Ata, a 'kumare' of her mother for fear that she might be overtaken by the curfew. [6]

Is it credible that a 13 year-old girl would walk her way home from Barrio Pineda, Pasig to Barangka, Mandaluyong at close to midnight alone? Is it also believable that she would have the courage to spend the night in the house of another when by her own admission she had not slept in other people's houses before? [7]

On the other hand, appellant's defense that complainant asked him to take her home, which he did in the company of his friends, does not only appear credible but is supported by the corrobo-rative testimonies of Raymundo

Castillo and Rosendo Laron, which testimonies were not refuted by the prosecution.

According to the complainant, as she was on her way to Aling Ata's house, the appellant came out of the dark, pulled her hair and stuck a pointed sharp object to the side of her body close to the waist and told her "lalagyan kita ng gripo sa ta-giliran" if she resisted.[8]

Her written statements to the police,[9] however, give a materially different account of this incident, particularly as regards the appellant's coming out of the dark while she was on her way to Aling Ata's house:

"T - Kung iyong natatandaan isalaysay mo nga sa pagsisiyasat na ito ang buong pangyayari.

S - x x x habang ako po ay naroron sa tapat ng bahay ni Aling Ata at hahakbang na lamang sa baytang papataas ng hagdanan ay mayroon pong taong biglang lumusot na tao sa ilalim nito [hagdanan] at nilapitan po ako at bigla po akong hinawakan sa aking buhok at tinutukan po ng patalim sa aking tagiliran x x x."

The defendant must have been waiting for complainant in Aling Ata's place if we were to believe her testimony. But nobody knew, including the appellant, that she would change her mind and instead of going home would decide to spend the night at Aling Ata's house. More so because complainant testified that prior to the incident, she had not talked to nor seen the appellant.

According to the complainant, she was raped in one of the rooms of the residence of Conrado Mision [father of Enrique Mision], the appellant helped by his three co-accused Enrique Mision, Enrico Piñacate and Romeo Yumo.

It was established during the trial that appellant was staying in said house only for a few months because its owner had taken pity on him.[10]

In this light, is it believable that the defendant-appellant would have the audacity of using said house for his criminal purpose? What reason could have impelled the three co-accused [who are cousins] to help the appellant in his dastardly act at the spur of the moment particularly since earlier that night, appellant was not with them. Also, did appellant not consider the possibility that Enrique Mision's parents might wake up in the course of the attack?

With complainant's testimony defying the rational limits of human experience, the faith and credence lent to it by the trial court is evidently erroneous.

Complainant's conduct after the alleged rape likewise casts doubts on the veracity of her claim that appellant forcibly had carnal knowledge of her. It was established during the trial that at 7:00 o'clock in the morning of the day after the rape was allegedly committed, complainant was already at Barrio Pineda watching the peni-teniya. At about 9:00 o'clock in the morning, she went to Evelyn Alcantara's house where she admitted to the latter that "inano siya ni Boy." At about 6:15 o'clock in the evening, she was at the NBI for the medical examination, which findings indicated that she was coherent, cooperative and ambulatory unlike the usual incoherent, shocked and nervous newly rape victims.

The ruling of this Court in the case of *U.S. vs. Flores*, 26 Phil. 268, finds apt application in this case particularly since the evidence of guilt of the appellant consisted wholly in the testimony of the complaining witness. Thus:

"The evidence as to the guilt of the accused . . . consists wholly and exclusively on the testimony of the complaining witness and while we have frequently held that the uncorroborated testimony of the woman may be sufficient under certain circumstances to warrant a conviction, yet from the nature of the charge and the ease with which it can be made and the difficulty which surrounds the accused in disapproving it where the point at issue is as to whether the cohabitation was had with or without the use of force or threats, it is

imperative that such testimony should be scrutinized with the greatest caution. In all such cases, the conduct of the woman immediately following the alleged assault is of the utmost importance as tending to establish the truth and falsity of the charge. Indeed, it may well be doubted whether a conviction of the offense of rape should even be sustained from the uncorroborated testimony of the woman unless the court is satisfied beyond a reasonable doubt that her conduct at the time when the alleged rape was committed and immediately thereafter was such as might be reasonably expected from her under all the circumstances of the case." [Underscoring supplied]

The lower court attached great significance to the fact that the complainant's testimony in court is substantially the same as her written statement to the police. But it is not unusual that when a person gives a statement to the police, he reads or is apprised of the same before taking the witness stand and his court testimony would be along the same vein as the written statement. The "spontaneity" of the complainant's testimony noted by the lower court is belied by the fact that her statement was taken in the Pasig Police Department at 9:00 o'clock in the evening of April 21, 1973, almost two days after the alleged incident happened. As rightly contended by the appellant, the true test should not be whether a court testimony of a witness is substantially the same as his written statement to the police, but whether such testimony and statement are credible and consistent with the established facts of the case and consistent with the realities of human experience. We have earlier seen that complainant's testimony did not measure up to these standards.

The trial court gave full credence to the complainant's testimony on the ground that no improper motive has been established by the defense to explain why she should testify falsely against the appellant and his co-accused. In so concluding, the court a quo obviously overlooked the testimony of the defense witness, Evelyn Alcantara, thus:

"Q: How about the parents of Irene Anonuevo?

A: The parents of Irene Anonuevo called me to their house and when I went upstairs, they were already discussing this complaint and they asked me who did that thing to Irene and I told them that I know Iyo but I did not know whatever happened to her. Iyo [complainant's brother] told me that they will make it a rape case and they will include me in the case." [11]

To our mind, this statement speaks eloquently of the reason behind the charge of rape against appellant. It must be remembered that complainant was only 13 years old at the time of the commission of the alleged crime. To a girl of this age and her family, it would appear more of a "face-saving" for her to admit having been raped rather than to admit having sexual intercourse with a man of her own free will. She would appear to be a victim rather than a willing partner, thereby gaining sympathy instead of contempt from the public, as indeed, she was able to convince the lower court that she was a brave and courageous girl for exposing the rape purportedly committed against her.

The lower court gravely erred in disregarding the testimonies of the defense witnesses, particularly that of Evelyn Alcantara. That Evelyn Alcantara is a close friend, confidante and gangmate of complainant was established during the trial.[12] Complainant shared secrets with her as proved by the fact that complainant need only say "Boy titigan mo ako" for Evelyn to understand whom she meant. Alcantara's testimony that on April 19, 1973, she and the complainant went to Barrio Pineda to watch the passion play but were not able to do so because they met Pio and Reny who took them for a tricycle ride, then to a place called "salakot" and finally to an isolated place called "bundok" where they separated from each other was not refuted during the trial. Furthermore, Alcantara's testimony that on April 20, 1973 at 9:00 A.M., complainant went to her house where she told her "inano ako ni Boy", not raped by Boy, was not refuted.[13]

It was admitted by the complainant herself that her mother tried to prevail upon Alcantara to testify in her favor.[14] In fact, Alcantara was not only "requested" to testify for the prosecution, but was threatened by the

complainant's brother that they would make it appear that it was a case of rape and that she will be implicated.[15] In spite of these per-suasions and threats, Alcantara gave her state-ment of what she knew to the police.[16]

The lower court did not explain in what manner Alcantara's testimony is biased in favor of the defense. It must be noted that she was even among the witnesses named for the prosecution both in the original and amended complaints. If there was any party which Alcantara would favor, it should have been the prosecution as the com-plainant is admittedly her close friend. Her testimony, in this light, assumes a ring of truth and candor.

In fine, an examination of the testimonies of the defense witnesses and the appellant show that they closely corroborate and interlock with each other in the principal and material aspects that it would be difficult to consign them to mere coincidence or as the result of deliberate fabrication.

We find that the crime of rape has not been established by clear and convincing evidence in this case. The testimony of the complainant lacks the ring of truth and credibility. It has also not been corroborated by the facts and testi-monies on record.

Conviction cannot be sustained on the weak-ness of the defense's evidence, but must rely on the strength of the evidence presented by the prosecution. The burden of proof is upon the pro-secution and until such burden is sufficiently met, the accused is protected by the constitu-tional right of presumption of innocence.

"The crime of rape is of such nature that it can only be established by clear and positive evidence and cannot be made to depend upon inference or dubious circumstantial evidence".[17] "Where the only evidence was that of the alleged injured party and there was doubt as to whether the act was done against the will of the complainant, judgment of conviction must be reversed".[18] "As a general rule, a judgment of conviction for rape cannot be based on the lone uncorroborated testimony of the offended woman, unless said testimony be clear, positive and convincing or supported by other facts and strong circumstantial evidence of record."[19]

WHEREFORE, the decision of the lower court is hereby reversed and the defendant-appel-lant Crisanto Baderes y Mapisa is acquitted of the crime of rape. No pronouncement as to costs.

SO ORDERED.

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

* Appellant's co-accused were tried separately as they surrendered to the Pasig Police Department only on the last day of the trial of appellant Baderes. (Decision, p. 12, Rollo)

** Likewise appearing on the medico-legal report is the conclusion that "She could have had sexual inter-course with man on or about the alleged date of commission." [This portion was not quoted by the Solicitor General in his Brief]

[1] Brief for the Plaintiff-Appellee, pp. 2-5

[2] Brief for the Defendant-Appellant, pp. 65-68, Rollo

[3] t.s.n., p. 19, May 25, 1973

[4] People vs. Nebres, 58 Phil. 903

[5] People vs. Delfinado, 61 Phil. 694

[6] t.s.n., pp. 9 & 43, May 25, 1973

- [7] t.s.n., pp. 51-53, May 25, 1973
- [8] t.s.n., pp. 7-9, May 25, 1973
- [9] Exhs. C & C-1
- [10] t.s.n., pp. 16-17, July 25, 1973
- [11] t.s.n., July 12, 1973, pp. 55-56
- [12] t.s.n., pp. 35-37, July 12, 1973
- [13] t.s.n., pp. 49-54, July 12, 1973
- [14] t.s.n., pp. 30-31, May 25, 1973
- [15] t.s.n., pp. 55-56, July 12, 1973
- [16] Exhibit I
- [17] *People vs. Forten*, 97 Phil. 983
- [18] *U.S. vs. Paz*, 9 Phil. 738
- [19] *People vs. Delfinado*, *supra*

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