

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUSTICO ABAY, DEFENDANT-APPELLANT.

G.R. No. L-37678. April 30, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal from a decision of the Court of First Instance of Manila, Branch XV, convicting appellant Rustico Abay of the crime of Forcible Abduction with Rape and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the offended party in the sum of P6,000.00, and to pay the costs.

The issue is one of credibility - whether Lydia Casaul, an 18-year old girl, was forcibly abused by appellant in the night of May 17, 1971, or whether appellant had carnal knowledge of her with her consent.

The case arose from a complaint filed on May 18, 1971 by complainant Lydia Casaul and her aunt, Amada Cargullo, with the police authorities. An investigation was made by the National Bureau of Investigation and subsequently the requisite preliminary investigation was conducted by Fiscal Luis Pena. On the basis of said investigation, a complaint was filed in court on July 16, 1971, alleging:

"That on or about May 17, 1971, in the City of Manila, Philippines, the said accused conspiring and confederating together with two others whose true names and identities are still unknown, and helping one another did then and there, willfully, unlawfully and feloniously abduct, take and carry away the undersigned complainant, an unmarried girl 18 years of age, by means of force and intimidation, to wit: by then and there pointing a gun at her, forcing her to ride in a waiting taxi at España St. in said city, against her will and consent and with lewd designs, and once there, said accused, by means of force and intimidation, have sexual intercourse with her, likewise against her will and consent."

The following facts have been established by the prosecution's evidence: At about 10:00 o'clock in the night of May 17, 1971, while complainant Lydia Casaul, an 18-year old waitress at the Taipeh House Restaurant in España St., Manila, was waiting for transportation to her residence, a taxicab in which appellant Rustico Abay was riding stopped near her. Rustico Abay alighted from the taxicab, pointed a gun at complainant's back, and ordered her to board the cab. Two (2) companions of Abay immediately alighted from the taxi. Abay then warned Lydia not to shout or else he would shoot her. Stricken with fear, Lydia did as ordered. Inside the cab, appellant repeated his threat. After a while, the taxicab stopped at a place where there were trees but no houses. Appellant then pulled her out of the taxicab and took her to a place near the seashore. While there, appellant Abay, despite complainant's resistance, was able to touch her body including her private parts. Rebuffed, however, in his attempts to remove her dress, appellant pulled her back into the taxicab. He then brought her to another place where she was taken inside a locked room illuminated dimly by an electric bulb. As she stood by the wall, Rustico Abay removed his shirt and trousers, after which he forced her to drink a beverage which appellant represented to be Pepsi Cola. After drinking the beverage, however, she felt dizzy. Abay then pulled her toward the bed. She pleaded with him not to go on with what he had in mind and to pity her, but her entreaties were ignored. She struggled to get herself out of his grasp, but dizzy as she was, Abay succeeded in removing her dress and panties. Abay then held her two

hands, stepped on her feet and forcibly tried to draw her legs apart, failing which he gave her a fist blow on her stomach and thereafter forcibly inserted his penis in her vagina. Lydia felt pain at this juncture and lost consciousness. Upon regaining consciousness, she felt pain all over her body and noticed bleeding in her private organ. She started to cry and Abay told her to dress up, which she did. Abay then took her to Quiapo in a taxicab and left her near the church.

When Lydia failed to return home in the night of May 17, 1971, her aunt, Amada Cargullo, got worried and went out to look for her. She failed, however, to find her. The next day, May 18, 1971, she continued her search. Passing by the Quiapo church on her way home, she found Lydia near one of the doors of the church. Lydia could hardly stand. She was staring blankly, her hair was dishevelled and in disarray, and her dress was torn at the back with its zipper broken. When asked what happened to her, Lydia's answers were incoherent. On their way home aboard a jeepney, she managed to state: "Si Rustico, si Rustico, inabuso ako." Lydia was first taken to the house of her aunt at 1704 Antipolo Street, Sta. Cruz, Manila, as it was already dark. When she was asked what happened to her, she burst into tears and was trembling. As she complained that she was raped, her aunt brought her the following day to the Medico-Legal Division of the Manila Police Department for examination. Dr. Abelardo Lucero, Medico-Legal Officer of said office, found in her hymen a "healing laceration at 6:30 o'clock which bleeds upon stretching" indicating forceful entry prior to the examination. Based on his medical findings, Dr. Lucero opined that the victim could have had sexual intercourse on May 17, 1971. From there, Lydia was brought to the National Bureau of Investigation, Manila, for investigation. After her investigation, she was referred to a psychiatrist at the National Mental Hospital in Mandaluyong, Rizal, where she was placed under observation from June 16 to July 23, 1971. Dr. Simeona Martin, psychiatrist of the institution, found her to be suffering from "reactive depression" caused by emotional and physical factors due to a harrowing experience. In such a state, the patient is sleepless, refuses to talk or eat and is unmindful of her surroundings. Lydia remained in such a state for a month but had already improved when she was discharged on July 23, 1971. Dr. Martin testified that in the course of her interviews with Lydia, the latter narrated to her, between sobs and tears, how she was abducted and forcibly sexually abused by appellant.

NBI Agent Orlando Dizon also testified that he was able to take down the statement of the offended party on June 10, 1971,[1] wherein Lydia narrated in detail under oath how she was forcibly abducted and abused on the night of May 17, 1971. After the NBI learned of the identity of the perpetrator of the offense, NBI Agents Orlando Dizon and Teodoro Pangilinan conducted a surveillance at the Radiowearth Appliance Company at España Street, Manila, the place where appellant was reportedly working. On July 14, 1971, they noticed that a man, who fitted the description given, arrived on a motorbike. After they approached him and asked about his identity, appellant told the NBI agents that his name was Enrique Sanchez; and when they asked for his driver's license, he presented to them a license in the name of Enrique Sanchez. When appellant was brought to the hospital, however, Lydia informed the agents that the man who represented himself as Enrique Sanchez was actually the appellant who was the one who abducted and raped her.[2] On the basis of Lydia's identification and testimony, appellant was arrested.

On the other hand, the defense's version of the story is that Rustico Abay and Lydia Casaul were sweethearts and that they met at the Taipeh House Restaurant where Abay used to take his meals and where Lydia works as a waitress. According to appellant, he and the complainant had gone to the San Miguel Hotel twice - the first time on March 12, 1971 and the second on May 16, 1971. During the first time, they did not have sexual intercourse because Lydia had her menstruation. On the second time, they arrived at the hotel at about 11:00 a.m. and left at about 9:00 a.m. of the next day, May 17. While they were at the hotel, they kissed and embraced each other and eventually had sexual intercourse. All these, according to the accused, were voluntary on Lydia's part. It was only when Lydia suggested that he leave his wife and live with her instead, and he refused, that she became angry and

walked out, leaving him. He followed her up to the Quiapo church where they separated.

Milagros Abay, wife of appellant, in an attempt to corroborate the declaration of her husband, testified that she came to know Lydia Casaul, the offended party, during the first week of March, 1971 when she found out that Lydia used to serve her husband at the Taipeh House Restaurant. During the same month, she claimed to have discovered a ring in her husband's pocket with an inscription "Rusty with love, Lydia, 2-14-71".[3] The next time she saw Lydia again was on July 16, 1971 at the National Mental Hospital because she was sent there by her husband. On that occasion, Lydia allegedly confided to her that her husband was courting her (Lydia) to which courtship she responded favorably. As a consequence, they used to take a walk at the Luneta, or go to the movies, and once even stayed in a motel overnight. After their overnight stay in a motel, appellant allegedly told Lydia that he was married, which revelation stunned her, and thereupon she asked Rustico to leave his wife and children but Rustico refused.

Romeo Cireneo, a bellboy at the San Miguel Hotel, also declared that on March 12, 1971, appellant and Lydia Casaul registered at the hotel and both appeared to be happy, staying there for about two to three hours. They came back on May 16, 1971 and stayed at the same hotel from 11:05 a.m. until 9:20 a.m. of the next day, May 17, 1971. He stated that he knew appellant because Rustico Abay introduced himself to him and that he was able to talk with the couple on various occasions when he entered the hotel room. To substantiate his statements, he presented portions of the hotel register.[4]

The trial court did not give credence to the aforementioned evidence for the defense. Firstly, because of the clear and positive evidence of the prosecution that the complainant was forcibly abused in the night of May 17, 1971; and, secondly, due to the inherent improbability of the version of the incident given by appellant.

Certainly, the testimony of appellant's wife, Milagros Abay, that on July 16, 1971 Lydia Casaul confided to her at the National Mental Hospital that she and her husband Rustico Abay were lovers could not be squared with the fact that Lydia had, on the basis of the testimony of disinterested witnesses, such as NBI Agent Dizon and Dr. Martin, complained that she had been forcibly abducted and abused by the appellant. Moreover, during said period, Dr. Martin clearly and categorically testified that on that date she could not have conversed with Mrs. Abay in that manner as she was then in a state of "reactive depression".

The testimony of Romeo Cireneo, bellboy at the San Miguel Hotel, was properly rejected by the trial court. Certainly, a married man who uses a motel or an hotel for his secret tryst avails of such establishment for the privacy offered and for the concealment it gives to his philanderings. He would, therefore, not blatantly reveal his identity or that of his paramour to the hotel bellboy. Attempt of the appellant to prove by means of copies of the hotel registers[5] that the appellant and the offended party were in the San Miguel Hotel on May 16, 1971 and not on May 17, 1971 is equally futile. As observed by the trial court, this cannot offset the facts established by the prosecution witnesses, aside from the observation that the strokes of the handwriting in Exhibit "4-A" are slanting backward, while those of the signature admitted by appellant[6] are slanting forward. Moreover, it was proven that the offended party was working on May 16, 1971.[7]

Appellant in this appeal now assails the veracity and credibility of the testimony of the offended party, particularly on the existence of force or intimidation on the occasion of the sexual act. To this end, he points to certain discrepancies in the narration of the attendant circumstances. These discrepancies are trivial and cannot substantially detract from the credibility of her testimony. Complainant's testimony appears positive, straightforward and sincere. It is replete with details relative to the perpetration of the offense which are consistent with her sworn statement taken on June 10, 1971 before agents of the National Bureau of Investigations[8] and her supplemental sworn statement taken on July 14, 1971, before the same NBI agents and in the presence of

witnesses,[9] wherein she named the accused-appellant, Rustico Abay, as the person who forcibly abused her. We have examined the afore-mentioned records in relation to complainant's testimony in court and found that they are consistent on all material points. In addition, We have considered the medical examiner's testimony as well as his report[10] of the examination conducted upon the person of the complainant on May 19, 1971, immediately after the commission of the offense, in which report the following findings were made:

"1. Healing laceration in the hymen - at 6:30 o'clock position which bleeds upon stretching.

2. Introitus vagina admits two adult fingers tightly;

Opinion: From the above findings it is believed that sexual intercourse with a man could have happened twice on May 17, 1971 as alleged by subject."

Likewise buttressing the claim of the offended party are the other testimonies and records submitted by the prosecution. There is, for instance, that of Amada Cargullo, the victim's aunt, who found her the following day, May 18, 1971, in a state of shock at one of the doors of the Quiapo church and, because of her revelations that she was abused by appellant, brought her to the Medico-Legal Division of Precinct 3, Manila Police Department, for medical examination. There is also the testimony of Dr. Simeona Martin, psychiatrist, that when she examined complainant on June 16, 1971, she was on the verge of tears, that when asked what happened to her on May 17, 1971, she began to cry, relating the manner in which appellant forced her to ride in a taxi and thereafter abused her. Notes of said interview were taken by the psychiatrist.[11] It has also been established that when the NBI agents apprehended appellant in front of Radiowealth Appliance Company at España Street, Manila where he was employed, appellant, instead of admitting his true identity, falsely represented himself as one Enrique Ranchez, showing to them a driver's license issued in such name, for which act of misrepresentation, appellant was charged with the offense of concealing his true name at the City Court of Manila. These are facts and circumstances which strongly buttress the testimony of the complainant. They reveal the inherent weakness of appellant's pretensions. Indeed, how could such conduct on the part of the offended party be explained if, as appellant claims, they were lovers and that Lydia submitted herself voluntarily to his carnal desires? As correctly observed by the trial court, complainant would not have been in such a depressed mental state in the morning of May 18, 1971 had she not undergone the harrowing and shocking experience aforementioned.

Appellant places much stress on the fact that in the course of their ride in the taxi, at the place near the sea and at the time they entered the hotel room, the offended party made no outcries for help. It must be noted that in all these occasions the offended party was under fear for her life because appellant had repeatedly threatened to shoot her if she made any outcry. As to whether such a threat would be sufficient to cow the victim into submission would depend upon the particular facts of every case. In the case at bar, the offended party was alone and it was late in the evening when appellant suddenly threatened to kill her with a gun. Considering her tender age and the environmental circumstances, it is not improbable that the fear and shock were sufficient to still her tongue. This Court has, in similar cases, noted that a young, innocent Filipina will not readily file a complaint for rape, narrate the details thereof in a public trial and disclose the sordid circumstances surrounding her dishonor, if her allegations do not bear the imprimatur of truth.[12] We are, therefore, satisfied that the evidence for the prosecution has established beyond reasonable doubt the guilt of appellant.

We note, however, that the court a quo ordered appellant to indemnify the offended party in the amount of P6,000.00. In view of the fact that the indemnity for the crime of rape has been raised to P12,000.00,[13] We hereby order accused-appellant to indemnify complainant in such amount.

With the foregoing modification, the judgment appealed from is hereby affirmed.

Fernando, Acting C.J., Barredo, (Acting Chairman), and Concepcion, Jr., JJ., concur.

Aquino, J., concurs in a separate opinion.

[1] Exhibit "D", Records, p. 329.

[2] Exhibit "E", Ibid., p. 331.

[3] Exhibit "2". According to the records, this was withdrawn by defense counsel in open Court.

[4] Exhibit "3", page 20; Exhibit "3-A", page 61; Exhibits "4" and "4-A". Records, pp. 395-396.

[5] Exhibit "4-A", Ibid., p. 396.

[6] Exhibit "1-A", Ibid., p. 394.

[7] Exhibit "L-1", Ibid., p. 425.

[8] Exhibit "D", Ibid., p. 329.

[9] Exhibit "E", Ibid., p. 331.

[10] Exhibit "A-1", Ibid., p. 297.

[11] Records, pp. 306-308.

[12] People v. Cawili, 65 SCRA 24; People v. Savellano, 57 SCRA 320; People v. Ignacio, 60 SCRA 11.

[13] People v. Amit, March 25, 1970, 32 SCRA 95; People v. Amiscua, Feb. 27, 1971, 37 SCRA 813; People v. Otto, 49 SCRA 306; People v. Gonzales, 58 SCRA 265.

CONCURRING OPINION

AQUINO, J.:

I concur, in the opinion competently crafted by Justice Antonio. I just want to point out that if the accused had been charged with the complex crime of serious illegal detention with rape, he would be liable for a capital offense. But the prosecutor chose to charge him with forcible abduction with simple rape, a non-capital offense.

That situation is analogous to robbery with qualified rape. If the prosecution charged a person with robbery with qualified rape, the offense is not capital (prior to the amendment of article 294[2] of the Revised Penal Code by Presidential Decree No. 767). If he was charged, with qualified rape only, the offense is capital.

There are instances where the prosecutor has discretion to choose the crime that he would charge. After he has made the choice, the pertinent provision of the Revised Penal Code should be applied (Arts. 335 and 342 in this case and not art. 267), even if by doing so the penalty would be lighter than the penalty under another applicable provision of the Code which was not invoked by the prosecutor.

As the saying goes, criminal law is an island of technicality in a sea of discretion.

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