

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALUSTIANO LOOD ALIAS SALES, DEFENDANT-APPELLANT.

G.R. No. L-52061. September 30, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the decision of the Court of First Instance of Bohol sentencing Salustiano Lood alias Sales to the penalty of "Reclusion Perpetua and to pay the costs," for the crime of rape, committed according to the evidence of the prosecution as quoted from the People's brief, as follows:

"In the evening of January 16, 1978, complainant Pacita Bolotaolo escorted her younger sister Elizabeth Bolotaolo to the house of her older sister Liliosa Bolotaolo Bunao in Bingag, Daus, Bohol. After staying in her sister's house for a while, complainant started on her way home to the house of her parents about one kilometer away. As she was passing the barrio school where the nearest house was 100 meters away, appellant suddenly emerged from the darkness. Appellant held complainant's left arm with his right hand and embraced her with his left arm. Then he kissed her on the left cheek and threw her to the ground. As she lay prostrate, appellant straddled her and turned her about. Sitting on the top of her body, he eased down his pants and brief and exposed his penis. Complainant shouted for help but nobody came to help her. Appellant picked up a piece of stone and threatened to strike complainant with it. He then forcibly removed her panties. After doing so, he forced his penis into her vagina and made 'push and pull' movements. After about five minutes, he stood up and proceeded for home. (pp. 3-10, t.s.n., August 11, 1978)

"Complainant likewise immediately headed for home. She promptly reported to her mother that she was raped by appellant. Her mother brought her to the Barangay Captain to lodge a complaint against appellant. (p. 10, id.)

"In the morning of the following day, complainant appeared before Dr. Sabiniano Labra in the Bohol Provincial Hospital and submitted herself for examination. She also reported the matter to the police. (p. 11, id.).

"The result of the examination of Dr. Labra is shown in his medical certificate (Exhibit D), to wit:

"INTROITUS ADMITS TWO FINGERS WITH EASE; NO FRESH HYMENAL LACERATION NOTED;
NO BLEEDING; SPERMATOZOA - NEGATIVE"

The foregoing version of the prosecution is not disputed by the appellant except as to the commission of the rape. In his brief, appellant claims he is a simple farmer from Bingag, Daus, Bohol, specializing in the preparation of land suited to the planting of ubi. He claims that complainant was his sweetheart since April 4, 1977. They live in the same barrio, their residence about a kilometer apart. About 8:00 in the evening of January 16, 1978, complainant came to his house and asked him to accompany her in going home. As requested, he accompanied her. It was a moonlight night. On their way, appellant hugged and kissed his sweetheart for the first time. She did not want to be kissed so she pinched him. Appellant got angry at the reaction of complainant who has been his sweetheart for quite a time already, hence, he pushed her to the side and went home leaving complainant alone on

her way home.

Appellant assailed the testimony of the complainant as totally incredible and unworthy of belief. Thus, he points to the testimony of the medico-legal witness that no injury was found on the body of the complainant and that there was no bleeding or fresh hymenal laceration, or a smear of spermatozoa in her vagina. While he admits his presence at the time and place of the alleged commission of the crime, he claims that he only took liberties on the person of the complainant by hugging her and kissing her on the left cheek.

As the Solicitor General clearly submits, the proof of the rape are the following:

"1. Complainant's unequivocal testimony that she was sexually assaulted by appellant.

"2. Lack of motive on complainant's part to falsely accuse appellant of rape. The mere act of appellant of hugging and kissing complainant, which infuriated her, is hardly enough to cause her to fabricate the serious charge of rape. On the contrary, if what appellant says is all that happened, it was more likely for complainant to have remained silent and keep the incident to herself because it occurred in a secluded place and nobody had witnessed it.

"3. The prompt report of the atrocity made by complainant to her mother.

"4. The prompt complaint made by complainant and her mother to the Barangay Captain.

"5. The prompt submission by complainant of herself to a doctor of the Bohol Provincial Hospital for examination.

"6. The report of the doctor who examined complainant showing that complainant had linear abrasions on her face and neck.

"7. The prompt complaint lodged by complainant with the police.

"It can be noted from the above that complainant spontaneously reported the outrage on her honor to her mother and the authorities. If the incident did not really happen, as appellant claims, complainant would not have made the report as it is not shown that she has a motive to fabricate a criminal charge against appellant. Or if she intended to make a major issue of the unwelcome hug and kiss of appellant, she would have delayed making the reports and complaints in order to be able to conjure a story with 'finesse,' as appellant puts it."

On the claim of appellant that complainant had been his sweetheart, WE are inclined to believe her denial because appellant mentioned in his testimony that she had written him a love letter which, however, he failed to submit in evidence, or even to present a witness to corroborate his claim that complainant was his girlfriend.

Relative to the alleged incredibilities and improbabilities in the testimony of complainant, suffice it to say that the matter refers to minor details which complainant could not have possibly remembered after the lapse of five (5) months from the commission of the crime. And, the allegation that the panty (Exhibit "E") was not presented to the police or to the municipal judge who conducted the preliminary investigation of the case cannot be given any importance. The complainant, having a limited education, could not have possibly known that it was necessary for her to present the same considering that neither the police nor the municipal judge asked for its presentation during the investigations. Further, the non-presentation of the panty worn by the offended party at the time she was sexually assaulted does not render inadequate the People's evidence. At most, the evidence is merely corroborative.

Further, the fact that she did not bleed and that there was no spermatozoa in her vagina are not valid arguments that rape would not have been committed. In the first place, the medical certificate shows that complainant suffered a linear abrasion in her right face and right neck. Dr. Labra testified that the linear abrasion was probably

caused by a fingernail. The medical finding confirms complainant's testimony that when he was attacking her and she resisted, appellant choked her. Neither is the absence of spermatozoa in the vagina an indication that rape was not committed. It was in the morning of the following day after the sexual assault was committed when she was examined by the doctor and the spermatozoa could have been washed away after she had urinated and cleaned herself. And, it is possible that the rapist did not ejaculate. It is enough that there is entry of the labia or lips of the female organ, without rupture of the hymen or laceration of the vagina (People vs. Hernandez, 49 Phil. 980).

WHEREFORE, the judgment appealed from, being in accordance with law and evidence, is **AFFIRMED**, with the modification that appellant should indemnify the victim Pacita Bolotaolo the sum of P12 ,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.

Makasiar, Melencio-Herrera, Plana, Vasquez, and Gutierrez, Jr., JJ., concur.
Teehankee, J., (Chairman), no part.

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