

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS VIRAY Y BONIFACIO ALIAS JESSIE, DEFENDANT-APPELLANT.

G.R. No. L-41085. August 08, 1988

Ponente: CORTES, J.

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CORTES, J.:

On 21 August 1974, complainant Josefina Betco y San Pedro, 26 years old and partially mute, filed a Complaint for Rape against Jesus Viray y Bonifacio allegedly committed as follows:

That on or about the 21st day of August, 1974 in Quezon City, Philippines, the above named accused with lewd designs and by means of force and intimidation did then and there wilfully, unlawfully and feloniously have sexual intercourse with the undersigned Josefina Betco y San Pedro, without her consent and against her will to her damage and prejudice in such amount as may be awarded under the Civil Code.

Contrary to law. [Rec., p. 1.]

After trial, the Court of First Instance of Rizal, Branch XVIII, Quezon City rendered judgment finding Viray guilty as charged and sentenced him to suffer reclusion perpetua, the accessory penalties of the law, and to pay the costs. He was also ordered to indemnify Josefina Betco in the sum of P10,000.00. From that judgment, Viray interposed the present appeal.

The lower court established appellant's guilt beyond reasonable doubt on the basis of the following facts:

Josefino Betco, partially mute, was 28 years old at the time of the incident. Although of normal hearing, she could utter only a few audible sounds due to an undetermined illness she suffered two or three years prior to the incident in question. She was also the mother of a one year old child she had with her boyfriend whom she did not marry because of her parents disapproval. Josefina lived with her parents in No. 14 Lantawan St., Barrio Imelda, Quezon City. Their house was adjacent to that of Josefina's sister, Angelina, where Josefina usually took her daily bath, as her sister's bathroom had running water while theirs had none.

Jesus Viray, appellant here, also lived in No. 14 Lantawan St. His house adjoined that of Angelina Betco's and was the third house from Josefina's home.

At about three o'clock in the afternoon of August 21, 1974, Josefina arrived home crying. She related to her mother that while she was taking a bath in the house of her sister Angelina, Viray suddenly entered the bathroom by forcing the door open. He then pulled her out, and dumped her on a bed inside the house. Josefina tried to resist Viray's attack by pushing him off and by struggling, but Viray, because of his husky build, and wide body, nevertheless succeeded in attaining his bestial purpose. Because of her partial muteness, and since she was hoarse and had a cough at the time, she could not shout. However, because she continued to struggle, Viray's organ

became detumescent, thus he failed to ejaculate. After the incident, which lasted about two minutes, Viray left her and Josefina ran home. In tears, she related to her mother by some words and gestures, how Viray sexually abused her. Upon learning of what happened to Josefina, her mother immediately brought her to Camp Crame. There, they were directed to file the complaint for rape in Precinct No. 4 of the Quezon City Police Department. Pat. Dionisio Ibuna, the police investigator, took the statement of Mrs. Rufina Betco and prepared the written complaint of Josefina (Exh. "B.") That same evening, Pat. Ibuna and other policemen picked up Jesus Viray at his house and brought him to Precinct No. 4, where Pat. Ibuna, investigated him.

The following day Dr. Prospero Cabanayan of the NBI medico legal section examined Josefina and in his medical report, stated these findings: 1) no extragenital injury was noted on the body of the subject at the time of the examination and 2) subject could have had sexual intercourse with a man on or about the alleged date of commission (Exh. "C".)

Viray's version of the facts is as follows:

He was a neighbor of the offended party in the squatter's area at Lantawan St., Quezon City. Since there was no toilet in their house, they disposed of their human waste by wrapping it in a piece of paper and placing it in a garbage can which would then be picked up by a garbage truck at nighttime. At noontime on August 21, 1974, he felt like moving his bowels and since there were visitors in their house, he went to the neighboring house of Angelina Betco. There he saw Josefina Betco, from whom he asked permission, to use the toilet. After he moved his bowels, which took only a few minutes, he went home and stayed there the rest of the day. In the evening at about 7:00 o'clock, several policemen fetched and brought him to the police headquarters where they informed him that he was charged by Josefina Betco for Rape.

Viray raises the following assignment of errors in this appeal:

- THE TRIAL COURT ERRED IN FINDING THAT ACCUSED FORCED AND INTIMIDATED COMPLAINANT SUBMITTING TO APPELLANT'S CARNAL DESIRE.

- THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT. [Appellant's Brief, p. 1.]

A correct resolution of the errors assigned by appellant hinges on the credibility of the complaining witness, Josefina Betco. Since her testimony is crucial in determining the guilt or innocence of the accused, it must be scrutinized with extreme caution before it is accepted as credible [People v. Villapana, G.R. No. 53984, May 5, 1988; People v. Quintal, G.R-No. L-49656, November 25, 1983, 125 SCRA 734.] This task is made doubly difficult in the case at bar because of the speech impairment of the complainant. In this regard, this court is guided by the time-honored doctrine that appellate courts will generally not disturb the findings of the trial court on the issue of credibility of witnesses, unless certain facts of substance and value have plainly been overlooked and that, if considered, might affect the result of the case [People v. Ibal, G.R. No. 66012, July 31, 1986, 143 SCRA 317; U.S. v. Estrada, 24 Phil. 401 (1913).]

In fine, a careful examination of the record discloses no cogent reason for the court to depart from this established rule as the evidence amply supports the trial court's finding that the guilt of the accused has been proved to a moral certainty.

A close scrutiny of Josefina's testimony discloses, that in spite of her speech handicap, she was able to identify

positively Viray as her assailant. She described how she tried, in vain, to ward off his advances by pushing him off with her hands. She went on to demonstrate by gestures, and by uttering the vernacular equivalent of the term sexual intercourse, how Viray was able to consummate the sexual act with her.

The trial court in fact took painstaking efforts to ensure the veracity of her answers. This is amplified in this part of the trial court's decision quoted below:

During the course of the trial, and in fairness to the defendant, the Court took pains to put into the record all the signs made by the offended party in reply to questions propounded to her as well as the exact words she uttered during the course of trial, in reply to questions both direct and cross examination. After a question is asked during the direct examination or cross examination, the offended party answered by sign language and partly by audible sounds. There was no need to translate to her by sign language the questions propounded to her, because she could hear. It was only when she gave the answer that there was a need of a special interpreter who understands the word she uttered and the sign language she made. After (the complainant had given) the answer, by words and sign language, the mother of the offended party who was the special interpreter, interpreted for the benefit of the Court the answers given. After the mother had given the interpretation, the Court always asked the offended party if the interpretation was correct and she affirmed that (her mother's) interpretations of her were correct. [Rollo, p. 16.]

In addition, the fact that Josefina related the incident to her mother immediately after it happened, shows a spontaneity indicative of the truthfulness of her account of the incident.

Appellant argues that the prosecution did not clearly establish that he employed force and intimidation and granting that force was indeed put to bear on Josefina, the resistance she put up was not such as would have sufficed to categorize the act of appellant as rape" [Appellant's Brief, pp. 10-11.] In support of this argument, appellant points out that there was no sign of violence inflicted on Josefina's body; that she did not even shout to attract the attention of a boy washing a car outside the house; and that the only resistance she put up was her pushing away the accused.

These contentions are untenable. As early as 1905, in *U.S. v. Villarosa*, [4 Phil. 434 (1905)] this Court through Justice Torres held:

It is a doctrine well established by the courts that in order to consider the existence of the crime of rape it is not necessary that the force employed in accomplishing it be so great or of such character as could not be resisted; it is only necessary that the force used by the guilty party be sufficient to consummate the purpose he had in view. (Judgment May 4, 1878, Supreme Court of Spain.)

This doctrine was reiterated in a long line of decisions including *People v. Momo*, [56 Phil. 86 (1931)]; *People v. Olden*. [G.R. No. L-27570 and 27571, September 20, 1972, 47 SCRA 45] *People v. Savellano*, [G.R. No. L-31127, May 31, 1974, 57 SCRA 320]; *People v. Sarile*, [G.R. No. L-37148, June 30, 1976, 71 SCRA 593]; *People v. Franco*, [G.R. No. L-40183, June 29, 1982, 114 SCRA 737]; and *People v. Budol*, [G.R. No. L-48010, July 31, 1986, 143 SCRA 241.]

In this case it was clearly shown that Josefina tried to fight off the lascivious advances of appellant by using both her hands to repel him but her resistance proved futile in the face of the superior strength of Viray. She failed to shout because being partially mute, she had difficulty in emitting sounds. Also, she testified that the day the incident happened, she had a hoarse voice and was coughing. The absence of visible signs of injury on Josefina's body does not mean that she offered no resistance, as the mere weight of the accused could have virtually

rendered her immobile. For rape to be committed, it is not necessary that there be marks of physical violence present on the victim's body [People v. Monteverde, G.R. No. L-60962. July 11, 1986, 142 SCRA 668; People v. Bawit. G.R. No. L-48116, February 20, 1981, 102 SCRA 797; and People v. Lat, G.R. No. 50086, August 21, 1980, 99 SCRA 297.)

Appellant next claims that it was impossible for the accused to commit the crime as it entailed a great risk of being discovered as the place where it allegedly happened is not an isolated place. This is untenable. It is not necessary that the place where the rape is committed be isolated. In not a few instances, this Court has held that rape can be committed even in places where people congregate; in parks, along the roadside, within school premises, and even inside a house where there are other occupants [People v. Opena, G.R. No. L-34954, February 20, 1981, 102 SCRA 755; People v. Aragona, G.R. No. L-43752, September 19, 1985, 138 SCRA 869.)

Lastly, appellant contends that there are material discrepancies in the testimonies of Josefina and her mother, Rufina. The latter testified that Josefina told her that she was pulled from the bathroom, placed on the bed and was abused there. Josefina however did not specifically mention this in her testimony.

The inherent difficulty of eliciting detailed answers from the partially mute Josefina explains the apparent discrepancy between her testimony and that of her mother's. Josefina can only utter certain words and the record shows that her testimony was made mostly through sign language interpreted by her mother, who served as the court's special interpreter. Thus, she could only narrate the main circumstances of the rape incident but could not graphically describe the lurid details of the sexual assault. Her mother, on the other hand, with whom she can readily communicate because of their long and constant association, can better relate her daughter's account, as she was told of the incident immediately after its occurrence.

Appellant points out next that Rufina Betco failed to Inform her husband about the incident immediately after the commission of the crime. He contends that such conduct is unusual as a mother's instinct is to immediately inform the father of their daughter's defilement. Rufina explained; that the reason she did not inform her husband immediately was because he was then sleeping and she feared that he might be taken aback," If she woke him. In any case, this is a minor detail which refers only to a collateral matter and which does not touch upon the commission of the crime itself.

On the other hand, appellant's defense leaves much to be desired. He admits that he saw Josefina initially walking towards her sister's house and he even talked to her. He also admits that he asked Josefina's permission to use the toilet and that he did use it at or about the time the incident happened and when Josefina was inside the house. He denies raping Josefina.

The Court cannot give weight to appellant's bare denials in the light of the positive identification of Josefina. It is unbelievable that his motive for going to Angelina Betco's house was only to move his bowels. He has not sufficiently shown that it was his practice to go to that house for that purpose.

More importantly, there was no showing that Josefina or her mother had any improper or illegal motive to foist such a serious accusation against the appellant. No bad blood existed between them and the accused. It even appears that the accused was in good terms with Josefina's family. He admitted that he was a frequent visitor to the Betco home as Josefina's brother is his compadre [tan, p. 6, 19 May 1975, Concordio Villamero.] Rufina also testified that Viray and his cousin Ben usually went to their house to ask for ice [tsn, p. 1, 13 November 1975, Ernesto Naval.] There is no logical reason therefore for Josefina or her mother to file the rape charge, if the facts constituting the name were not true. Josefina need not have exposed herself to public shame and ridicule by having to undergo a physical examination and to suffer the humiliation of a public trial, unless her only motive was to bring the guilty party to justice.

This Court upholds the trial court's finding that appellant's guilt has been proved beyond reasonable doubt.

WHEREFORE, in view of the foregoing, the decision appealed from is hereby **AFFIRMED** except as to the amount of the indemnity which is raised to P30,000.00.

SO ORDERED.

Fernan, C.J., Feliciano, and Bidin, JJ., concur.

Gutierrez, Jr., J., no part; was Acting Solicitor General in the case.

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