

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESARIO SALAZAR, DEFENDANT-APPELLANT.

G.R. No. L-37791. October 30, 1979

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PER CURIAM:

Cesario Salazar was charged before the Court of First Instance of Misamis Oriental for having allegedly raped Mercedes Macahilos, a thirteen-year old girl, on the night of September 17, 1972, in Barrio Ricoro, Gingoog City. Judgment was rendered in the case on July 31, 1973 whereby the defendant was sentenced, under the charge aforesaid, "to suffer life imprisonment, to indemnify the offended party in the amount of P6,000.00, and to pay the costs." From this judgment, the defendant has appealed, claiming that the trial court erred:

"1. By not dismissing the case against the accused-appellant for lack of jurisdiction as there was no valid complaint filed;

"2. Granting, arguendo, that the trial court has jurisdiction, by not acquitting the defendant-appellant for insufficiency of evidence;

"3. By giving credit to the unsworn testimony of complainant; and

"4. By not acquitting defendant-appellant on the basis of his evidence."

1. The first error assigned by the appellant is that the trial court had not acquired jurisdiction over the case since there was no valid complaint filed.

The complaint filed with the trial court reads, as follows:

"COMPLAINT

"The undersigned, Mercedes Macahilos, herein Offended Party, after having been duly sworn, accuses Cesario Salazar of the crime of Rape, committed as follows:

"That on or about the 17th day of September, 1972, at more or less 10:00 o'clock in the evening, in Barrio Ricoro, Gingoog City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to have sexual intercourse with the Offended Party, did then and there wilfully, unlaw-fully and criminally with the use of a dagger, force and intimidate Mercedes Macahilos, by taking her downstairs from her house and upon reaching the pineapple plantation and once there, ordered her to lie down and to remove her pantie and when the offended party was laying on the ground, accused, with the use of a dagger, and with force and intimidation, succeeded in having sexual intercourse with Mer-cedes Macahilos, a thirteen-year old woman of good reputation and against her will. That two attendant aggravating circumstances are present in the com-mission of the crime, namely, taking advantage of superior strength and night-time.

"Contrary to and in violation of Article, 335 of the Revised Penal Code as amended by Republic Act 4111, in relation to Article 14, pars. 6 and 15 of the Revised Penal Code.

"Gingoog City, for Cagayan de Oro City, November 13, 1972.

(SGD.) MERCEDES MACAHILLOS

Offended Party

"I HEREBY CERTIFY that I have conducted a preliminary investigation in the above-entitled case giving the accused the chance to appear in person and counsel; to cross-examine the witnesses for the prosecution, and to give testimony in his favor at said investigation and that there is reasonable ground to believe that the offense charged has been committed and that accused is probably guilty thereof.

(Sgd.) NICOLAS P. TACANDONG, JR.

2nd Assistant City Fiscal

"SUBSCRIBED AND SWORN to before me this 13th day of November, 1972, in Gingoog City, Philippines.

(Sgd.) DIOSDADO T. ABUGOTAL

City Fiscal

"WITNESSES:

1. Mercedes Macahilos, Ricoro Gingoog City
2. Norma Batulan, Magallanes, Gingoog City
3. Bernardina Macahilos, Ricoro, Gingoog City
4. Dr. Ireneo Pascual, Medical Officer, Gingoog City and others.

"BAIL BOND RECOMMENDED: P40,000.00."

The appellant claims that the above-quoted complaint was not subscribed and sworn to by the complainant, and, hence, not a valid complaint within the scope of Section 2, Rule 110 of the Rules of Court.[1] In support thereof, the appellant cites the case of *People vs. Santos*,[2] wherein the Court said the following:

"We cannot consider the information, although signed by petitioner Bansuelo together with the fiscal, as equivalent to the complaint required by law, because said information lacks the oath of the complainant; the jurat contained therein is the subscribed and sworn certification of the fiscal that he had conducted the preliminary investigation in which the offended party had taken no participation whatsoever; in very unequivocal terms, the information commences with the statement that 'the undersigned fiscal accuse Engracio Santos of the crime of rape', the offended party not having been mentioned at all as one of the accusers.

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"This Court has invariably maintained strict compliance with the jurisdictional requirement of a complaint by the offended party, as defined in Section 2 of Rule 106 and Article 344 of the Revised Penal Code. In the case of *People vs. Palabao* (L-8027, August 31, 1954), we considered insufficient an information filed with the Provincial Fiscal, wherein the offended party signed at the bottom thereof and above the signature of the prosecuting officer, the information even reciting that the Provincial Fiscal charged defendant with the crime of seduction at the 'instance of the offended party.' In the case of *People vs. Martinez*, (76 Phil. 559), this Court motu proprio dismissed the case for failure of the aggrieved party to file the proper complaint for the offense of oral defamation, although the accused never raised the question on appeal, thereby showing the necessity of strict compliance with the legal requirement even at the cost of nullifying all the proceedings already had in the lower court."

The contention is without merit. As pointed out by the Solicitor General, there was substantial compliance with the rules since the complaint states the name of the defendant; the designation of the offense by statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed, as required by Section 5, Rule 110 of the Rules of Court; and, besides, the complainant, Mercedes Macahilos, had subscribed to her complaint of rape as shown in the opening paragraph of the complaint which states:

"The undersigned, Mercedes Macahilos, herein Offended Party, after having been duly sworn, accuses Cesario Salazar of the crime of Rape, x x x." (underscoring supplied)

The ruling of the Court in the case of *People vs. Santos*, cited by the appellant, is not conclusive for the reason that it was an information that was filed therein and not a complaint; and the opening paragraph of the information clearly and un-mistakably shows that it was the fiscal alone who accused the respondent Santos with the crime of rape and the offended party was not even referred to in the body of the information as having requested its filing.

2. The appellant also contends that the trial court erred in not acquitting him for insufficiency of evidence. The Solicitor General summarized the evidence of the prosecution as follows:

"The rape of Mercedes Macahilos took place in their home barrio called Ricorro, a remote and secluded place within the territory of Gingoog City, (p. 42, t.s.n., July 6, 1973; pp. 38-39, t.s.n., May 8, 1973). Previous to the perpetration of the evil deed, at night time of September 17, 1972, three young girls Mercedes Macahilos, (the complainant, then 13 years old), Bernardina, (complainant's 11-year old sister) and their cousin, Norma Batulan (then 17 years old), slept in the sala of the humble Macahilos home in Ricorro. (pp. 24-26, & 40, t.s.n., May 8, 1973; pp. 1-2, t.s.n., July 6, 1973).

"At about 10:00 o'clock that night, September 17, 1972, the appellant, Cesario Salazar, having somehow gained unlawful access to the Macahilos home, rudely woke up the 13-year old complainant as he touched and fondled her breasts. (pp. 26-27, t.s.n., May 8, 1973; p. 3, t.s.n., July 6, 1973). Salazar held a dagger in his right hand, "pointing it" at the victim as he, in the meanwhile, unilaterally enjoyed the victim's innocent breasts. (pp. 28-29, t.s.n., May 8, 1973; p. 4, t.s.n., July 6, 1973). Mercedes had cried aloud at one point because of pain, as the assailant pawed her breasts. (p. 40, t.s.n., May 8, 1973; p. 4, t.s.n., July 6, 1973).

"The appellant, subsequently, dragged the 13-year old girl to the kitchen, then threatening, "If they will shout he will kill us all." (p. 5, t.s.n., July 6, 1973; p. 42, t.s.n., May 8, 1973). From the kitchen, he forced the terrified young victim down the back stairs towards the "pineapple plantation," Salazar, all the while, armed with his dagger, menacing his victim. (pp. 5-6, t.s.n., July 6, 1973) Salazar, he with "his body which was big," took the full measure of the 13-year old girl's chastity in that pineapple plantation. (pp. 5-7, & 19, t.s.n., July 6, 1973) Mercedes Macahilos relates her ordeal in the following manner:

"Q How did he let you lie down?

"A He pushed me and so I suddenly sat down.

"Q And what happened after that?

"A Because I was sitting down he pushed me again so, I was able to lie down.

"Q All the while where was the dagger of Cesario Salazar?

"A It was still in his right hand.

"Q What did you feel when you were already sitting down and pushed by Cesario Salazar with a dagger in his right hand?

"A I felt pain on my right shoulder be-cause he held it tight and pushed me.

"Q Now, when you were already lying down what did Cesario Salazar do?

"A He removed his pants.

"Q And then?

"A And then he removed my panty.

"Q And after that what happened?

"A Then he squatted near my feet and lifted my feet and placed them on his shoulders.

"Q How were your feet placed on the shoulders of Cesario Salazar?

"A He held my feet, lifted my feet and place one foot on one shoulder and the other to the other shoulder.

"Q And what did he do after that?

"A Then he started inserting his organ into my vagina.

"Q What did you feel when he tried to insert his organ inside your vagina?

"A I felt pain.

"Q What did you do?

"A I moved.

"Q How did you move?

"A Sidewise.

"Q Then what else happened?

"A He removed his penis from my vagina and then he inserted his finger into my vagina.

"Q And what did you do after that?

"A Then he again inserted his penis into my vagina.

"COURT:

"Q When he inserted his finger to your vagina what did he do?

"A I felt that he moved his finger inside.

"Q What did you feel while his finger was inside your vagina?

"A Pain sir.

"Q What did you do?

"A I moved and I cried.

"FISCAL TACANDONG:

"Q And after inserting his finger what did Cesario Salazar do next?

"A He removed his finger from my vagina and then he inserted again his organ into my vagina.

"Q What organ are you referring to?

"A His penis.

"Q When he removed his finger and and again inserted his penis was he able to insert his penis inside your vagina?

"A Yes sir.

"Q What was his action when he tried to insert his penis inside your vagina?

"A He made a push and pull movement.

"Q And what did you feel?

"A I felt very painful.

"Q What part of your vagina did you feel the pain? Outside or inside?

"A Inside.

"Q What did you do when you feel the pain inside your vagina when he inserted his penis?

"A I was moving and I cried.

"Q When what happened, next?

"A When there was already a discharge from his penis then he stopped.

"Q How did you know that there was already a discharge?

"A My vagina was wet." (pp. 6-9, t.s.n., July 6, 1973).

A post-rape medical examination was conducted on the young victim and the report thereof reads as follows:

"(1) Contusion Hematoma Labia Majora, Right

"(2) Erythema on vaginal opening on aperture and at Fourchett.

"(3) Hymen negative for laceration

"(4) Vaginal smear negative for Spermatocytes." (Exh. A, p. 8, rec.)[3]

The appellant assails the veracity of the testimony of the complainant, claiming it is all a lie and a pure fabrication. But what powerful motive could have numbed all sense of modesty and shame in a thirteen-year old girl, barely reaching the age of puberty, and impelled her to concoct a story that would certainly bring ignominy, dishonor and humiliation to her and her family? And if it were a fabrication, how could she have told such a story and be cross-examined about it knowing that at any stage her statements would be placed under the close scrutiny of men learned in the law? Certainly, it was only to vindicate her honor that gave her the courage and tenacity to undergo the trauma of recalling her harrowing ordeal which she would have preferred to forget and to leave unknown to others. As has been said:

"A maiden especially a country girl like the offended party herein, would not expose herself publicly and in court, airing acts so repugnant to modesty as those involved in a narrative of acts constituting rape, unless she is urged by the impelling force of sincerity and the honest purpose of obtaining a redress for her grievance. Shameless effrontery and cynicism alone cannot make a girl face without a blush the ordeals of publicity in making a nar-ration of rape; and we have not been shown that the offended party is a shameless woman or anything of the kind."[4]

The insinuation that this complaint against the accused was filed in retaliation for the conviction of the uncle of the complainant for the crime of rape and that the parents of the offended party may have resented the appellant's occupation of a neighboring parcel of coconut land is preposterous and absurd. It is against human nature and the ordinary course of things for the said parents to sacrifice the honor, dignity and future of their daughter for such nugatory motive. Besides, there is no evidence that the appellant was instrumental in the conviction of the relative of the complainant as to motivate her parents to wreak their vengeance upon him.

At any rate, We have meticulously reviewed the record and find that the purported inconsistencies and improbabilities pointed out by the appellant are more fancied than real. Thus, the appellant claims that the prosecution failed to explain how the accused gained entry into the house of the complainant which was barricaded from the inside. But, it was established that the appellant and his victim had been neighbors for quite some time. It had also been shown that the accused had stayed in the house of the complainant for a month's time and thus became intimately familiar with the complainant's house.[5]

The appellant likewise points out that the complainant and her companions in the house did not make an outcry when the accused dragged the complainant to the kitchen and thence to the pineapple plantation where she was raped. Persons, however, have different reactions to similar situations. Some may manifest an aggressive or violent attitude, while others like the complainant and her companions in the house, may cringe in a mute fearful attitude. Fear is capable of producing and having the effect of physical force required to overcome the resistance put up by a victim of rape. It was this fear impressed firmly in the minds of the complainant and her companions, by the appellant's threat to kill the three of them, backed up by the dagger he was then wielding, that overcame them. Coupled with this is the superior male strength of the accused and the relative tender ages of the complainant and her companions.

The appellant stresses the improbability of the commission of the sexual act in view of the position taken by the accused in allegedly raping the complainant. The appellant argues thusly:

"8. Then comes the improbability of sexual intercourse. Complainant declared that after she laid down the defendant-appellant removed his pants or underwear, whichever is correct and then the latter removed her panty, he squatted near her feet and then lifted her feet and placed them in his shoulders (t.s.n., Pasal, p. 7). Then she modified this by declaring that it was not her feet that were placed on his shoulders but her legs were resting on his shoulders and her feet were hanging on his back (t.s.n., Pasal, p. 45). So that when her legs and feet were on that position while Defendant-Appellant was squatting, that was the time when he inserted his organ in her vagina (t.s.n., Pasal, p. 7). With this position of the Defendant-Appellant on a half-sitted position (squatting) and the feet of the complainant hanging or dangling at the back of Cesario Salazar while her legs were resting over her shoulders, the position therefore of the vagina would be elevated than the penis. The vagina must be positioned between her breast and abdomen. How could Cesario Salazar insert his penis, unless he would lie over her with face down and her feet spread out or crossed around the waist or thigh of Salazar. If sexual intercourse is improbable with this position, then it is not true your Honor that Cesario Salazar had entered the house and dragged the complainant down to the pineapple plantation and raped her. Moreover, if his hand was holding a dagger and his arms gripped her thigh she would have been wounded with the dagger." [6]

A rapist, however, rarely considers the position his victim may have in the sexual act. His purpose is to be sated and that alone. Whether or not his victim is contorted is the least of his concerns. It is not improbable, therefore, that the appellant could have violated the complainant in the manner she described.

The appellant likewise emphasizes the impossibility of the commission of the crime because the medical certificate indicated that the hymen was negative for laceration or tear and that the vaginal smear is negative for spermatozoa. However, the absence of lacerations, abrasions or rashes in the genital organ of the victim that

would indicate forcible sexual intercourse can-not definitely be a basis for concluding that a woman did not have sexual intercourse.[7] It is not altogether impossible for the complainant to be endowed with an elastic membrane so that no tear or laceration could be found therein after the sexual act complained of.

Nor will the absence of spermatocytes from the specimen taken from the complainant's vaginal canal disprove the commission of the crime of rape. The important factor in rape is not emission of the semen, but penetration, and the crime is deemed consummated even without complete penetration, it being sufficient that the labia has been penetrated.[8] In fact, it is not even necessary that there be a medical examination of the victim in cases of rape. Whether or not the charge will prosper depends upon the evidence offered and so long as such evidence convinces the court, a conviction for rape is proper. At any rate, it is not improbable that the complainant washed herself not only for the sake of cleanliness but more particularly in order to avoid possible conception.[9]

The appellant also assails the testimony of the parents of the offended party, claiming it to be incredible and unworthy of belief. The settled, long-standing rule where the issues raised hinge on credibility of witnesses is for the appellate tri-bunal to give due respect to the assessment of the facts made by the lower court, said court having had the opportunity, not only of receiving the evidence, but also of observing the conduct and demeanor of the witnesses while testifying. This rule should not be overturned unless there is a showing that in making the disputed factual findings, the trial court has over-looked or failed to consider certain facts of weight and importance that could have materially affected the conclusion reached in the case.[10] In the instant case, there is no positive reason that would justify a reversal of the rule. Anyhow, the lone testimony of the offended party is sufficient to sustain the conviction of the accused.

3. The appellant further contends that the trial court erred in giving credit to the unsworn testimony of the complain-ant. The appellant puts emphasis on the fact that the transcript of stenographic notes of the trial held on July 6, 1973 does not show that the complainant had been administered the oath before her direct examination.

Indeed, in the transcript of stenographic notes of the trial held on July 6, 1973, the court stenographer omitted the statement that the witness had previously subscribed to an oath before giving her testimony. But, this omission can be attri-buted to the court stenographer's inadvertence or inexperience because at the resumption of the trial in the afternoon of the said day, the same court stenographer stated that the witness "testifying under the same oath,"[11] which would show that an oath had been previously administered to the witness. At any rate, it appears that the complainant had been subjected to an extensive cross-examination by counsel for the appellant. The appellant is now estopped from claiming that the witness was not under oath when she testified. If a party fails to object to the taking of the testimony of a witness without the administration of an oath, he will be deemed to have waived the objection.[12]

4. Finally, the appellant contends that the trial court erred in not acquitting him on the basis of his evidence. The defense is alibi. According to the appellant, he was drunk on the night in question and was sleeping in his house when the al-legend rape took place and did not wake up until dawn of the next day when he became hungry.

As to the proffer of alibi made solely by the appellant as his basic defense, We need only state that by now it is almost trite to say that alibi is amongst the weakest of defenses. Easy to concoct, it may be properly credited only if established by convincing and satisfactory proof. It must be clearly shown not only that the accused was at some other place but as well that it was physically impossible for him to be at the scene of the crime at the time of its commission. Guillermo Bendijo, Ricardo Lajola, Cipriana Salazar and Julito Salazar who were presented by the appellant as witnesses in support of his alibi merely declared that the appellant was drunk on the night in question; that Ricardo Lajola had offered the appellant some wine which the latter accepted; that Guillermo Bendijo brought the appellant home because of his inebriation; and that his wife, Cipriana Salazar, attended to the

appellant when he reached home. Their declarations, however, cannot serve to overthrow the testimony a Mercedes Macahilos and Norma Batolan who positively identified the appellant and definitely placed him at the situs of the crime. Besides, Guillermo Bendijo left after bringing the appellant home and Cipriana Salazar and Julito Salazar went to sleep after the appellant had laid down,[13] so that they could not have known what the appellant did while they were asleep.

The trial court, therefore, did not err in finding the accused Cesario Salazar guilty of the offense of rape. The commission thereof was with the use of a deadly weapon, to wit a dagger. Under Art. 335 of the Revised Penal Code, as amended by R.A. 4111, the imposable penalty is reclusion perpetua to death. Two aggravating circumstances are present in the commission of the offense, to wit: that the crime was committed in the night time and in the dwelling of the offended party.

WHEREFORE, appellant is sentenced to the penalty of Death, and the indemnity is increased to P12,000.00. As thus modified, the judgment appealed from is affirmed in all other respects. Costs against the appellant.

SO ORDERED.

Makasiar, Antonio, Aquino, Concepcion, Jr., Santos, Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., Teehankee, and Abad Santos, JJ., no part.

Barredo, J., concur. In connection with the alleged defect of the complaint, I am convinced that the jurat signed by the fiscal was intended for the conclusions and not the certifications of the assistant fiscal, this being unnecessary.

[1] The said section provides:

"Sec. 2. Complaint defined. - Complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated."

[2] 101 Phil. 798, 802-803.

[3] pp. 3-8, Appellee's Brief.

[4] People vs. Brocal, 36 Off. Gaz., 858, 860.

[5] pp. 29-30, 32, t.s.n., May 8, 1973; p. 14, t.s.n., July 6, 1973.

[6] Appellant's Brief, p. 17.

[7] People vs. Canastre, 82 Phil. 480.

[8] People vs. Oscar, 48 Phil. 527; People vs. Hernandez, 49 Phil. 980.

[9] People vs. Selfaison, 110 Phil. 839.

[10] People vs. Sales, L-29340, April 27, 1972, and cases cited therein.

[11] p. 13, t.s.n. of July 6, 1973, Pasal.

[12] Francisco, Revised Rules of Court, Vol. VII, p. 197, citing 14 Ency. of Evidence.

[13] p. 108, t.s.n. of July 14, 1973, Pasal.

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