

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRANCISCO ROYERAS ALIAS BUYO, DEFENDANT AND APPELLANT.

G.R. NO. L-31886. April 29, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

Francisco Royeras appealed from the decision of the Court of First Instance of Leyte, convicting him of rape, sentencing him to reclusion perpetua and ordering him to indemnify Eufrosina Almaden in the sum of three thousand pesos as moral and exemplary damages (Criminal Case No. 12199).

The judgment of conviction was predicated on the following evidence:

In 1967 the spouses Pedro Almaden and Eufrosina Almaden, thirty-three and twenty-six years old respectively, resided at Barrio Maribi, Tanauan, Leyte. Also residing in the same barrio was Francisco Royeras (Ekong or Buvo), a twenty-six year old married man, a farmer, and a "criminal" who had killed a person in a fight. He is the second cousin of Pedro Almaden. They are compadres. Royeras volunteered to act as godfather of the first child of the Almaden spouses. Judge Lope C. Quimbo described Eufrosina Almaden as a good-looking housewife with a full figure and her husband as much smaller than Royeras.

At around nine o'clock in the morning of October 2, 1967 Eufrosina was on her way to her newly constructed house about half a kilometer from her old house. Her husband had gone ahead to that place. She promised to follow him after she had fed the pigs. While Eufrosina was passing a hedge of bariw plants, Royeras, who was hiding behind the shrubs, suddenly emerged from his hideout and grabbed her left leg. She fell to the ground, flat on her back.

She tried to stand but she could not extricate herself from the clutches of Royeras who was firmly holding her left-knee joint and her nape. He was endeavoring to carry her bodily. He succeeded in lifting her and bringing her near the longbia plants on the river bank about five meters away. He placed her on the ground in a prone position, seized her hands and forcibly placed them behind her back. Then, he sat on her abdomen, drew his small bolo and warned her not to shout or he would kill her. Knowing Royeras to have killed a man, she kept quiet. There were no houses nearby. She kept struggling all the time to free herself from his embrace. She did not succeed because of his superior strength.

Royeras, in his underwear, had sexual intercourse with her. While his right hand was pointing the bolo at her breast, he held his penis with his left hand and inserted it into her organ. Being a married woman, she knew that there was a penetration of her organ. She had no pantie at that time. She had removed it before going out because it was dirty. She had washed it. He attained his climax. In contrast, she did not experience any orgasm.

After the coition, she stood up and wiped her vagina. She saw semen flowing down her thighs. She returned to her old house and took a bath. She suffered slight contusions which the doctor did not bother to treat.

She related the outrage to her husband at noontime when he returned. He found his house closed. His wife was

crying. He made an ocular inspection of the grassy spot where the incident took place. The grasses had been flattened. The mud was exposed. His first impulse was to hunt down Royeras and punish him but she dissuaded him from doing so because Royeras was a "criminal" and had a firearm.

They decided to go to town in the afternoon and report the rape to the authorities. Policeman Kikoy Mendiola on that same day, October 2nd, investigated Eufrosina in the office of the chief of police. He typed her statement which on October 4th was sworn to before the municipal judge. Her husband executed his own sworn statement. She filed a complaint for rape on October 4th (Exh. C).

In that same afternoon of October 2nd, Eufrosina was examined in the Leyte Provincial Hospital. Her vaginal smear was negative for sperm cells (Exhs. A, B, 1). The doctor did not find any external signs of violence. The perineal examination did not reveal any lacerations. The vaginal orifice (introitus) admitted two fingers easily. The vaginal wall was lax, the cervix closed and the uterus was not enlarged (Exh. 2). Doctor Arcadio Galapon, who examined the complainant, in explaining why her vaginal smear was negative for sperm cells, said:

Q (by court). So the Court seems to understand that a woman who is married for a long time already and have children, [a sexual intercourse would not show in the genital organs? - A. A few minutes after the sexual intercourse will show or there will be signs. But a few hours after that, it will be hard to determine already (14 tsn Nov. 5, 1969).

Doctor Galapon also explained that in this case, where the complainant's vaginal orifice is wide, "an examination will not easily determine whether she has just a recent sexual intercourse". Moreover, if the ejaculation took place outside the vagina, the sperm cells, of course, would not be present inside that organ. The trial court found that Royeras was able to insert his penis into the vagina of Eufrosina but he ejaculated after he had pulled out his penis. So, his semen was spilled on her thighs. That was the mucous-like substance which she had perceived.

Royeras denied the rape charge. His defense is that he had adulterous relations with Eufrosina. His story is that he and Eufrosina were sweethearts in Dulag, Leyte, before she got married. After her marriage, she resided at Barrio Maribi, where Royeras, also married, happened to reside.

One rainy day, he allegedly passed by Eufrosina's house. He came from his farm. He was on his way home. She invited him to her house and offered him tuba, that fermented sap of the coconut tree commonly associated with crimes in rural places.

After four glasses, he complained of dizziness. He wanted to leave the house. Eufrosina allegedly told him to stay and lie down on a mat which she spread behind a curtain. She lay beside him on that mat. She was wearing a chemise. Then and there they embraced and had sexual intercourse.

Thereafter, he tried to avoid her because they were both married but she insisted that they should continue the liaison. She allegedly warned him that she would disclose their criminal conversation to her husband and to Royeras' wife. That scared Royeras. He had to agree to continue the affair. Eufrosina was bent on holding to Royeras as her paramour. She devised a way of alerting him that the coast was clear. Whenever her husband was away, she would hang a white towel by the window of their house. That meant he should come to her. She told him that, if he ignored the signal, she would cause him trouble.

Thus, they had several trysts. They met once more at about noontime of October 2, 1967 at her house. As they were about to have sexual intercourse, they were surprised by Federico Almaden, the father-in-law of Eufrosina. He had a bolo in his hand. Trouserless, Royeras jumped out of the window. She threw his trousers after him. To cover up her misdeeds, she had to file the complaint for rape and made it appear that she had been sexually violated. She allegedly told Royeras when he was already in jail: "If I will not continue to file the case, I will be

killed by my husband."

Eufrosina, in rebuttal, denied the story of Royeras. She said that appellant and his relatives went to the house of the late Judge Calda (who was helping her) to solicit her pardon and to plead for the dismissal of the case.

The trial court explicitly made it of record that "it very closely observed the conduct of the complainant, while on the witness stand". It "was fully convinced of her sincerity when she related the incident as it actually happened". It characterized the story of the defense as "fantastic as it is unbelievable", "not only far-fetched but quite ridiculous".

The trial court sensibly noted that it could not understand why Royeras would be afraid of Eufrosina's husband who is physically inferior to him, not to mention the fact that he (Royeras) "had already killed a person".

We agree with the trial court's finding that the prosecution's evidence is more credible than that of the defense. Appellant Royera's version has the flavor of a cock-and-bull story that is difficult to swallow. Eufrosina's father-in-law lived at a distance of only ten meters from her house. That circumstance alone would have precluded her from daring to indulge in adulterous relations with Royeras in the reckless manner recounted by him.

The inveracity of appellant's version was aggravated by the prevarications of Gaudiosa Royeras, a forty-seven year old housewife who at first denied that she was related to Francisco Royeras but who later admitted that the latter, whose real surname is Buyo, is the nephew of the witness' husband, Emeterio Royeras. Gaudiosa does not know the difference between two and three.

She brashly claimed to have seen Eufrosina and Royeras drinking tuba on October 2, 1967 and to have heard her father-in-law shouting "salbaje ka" to Royeras when he jumped out of the window of Eufrosina's house. The other incidents narrated by Gaudiosa Royeras are so obviously fabricated that the trial judge told her, before she left the witness stand, that she should tell the truth, that she was not sincere to the court and that she could be sent to jail for having lied.

In this appeal, Royeras contends that the trial court erred in disregarding the testimony of Doctor Galapon and in not giving any probative value to the medical certificate that the vaginal smear was negative for sperm cells (Exhs. A, 2).

The doctor did not testify that no rape was committed. What he affirmed was that he could not tell whether there was sexual intercourse because Eufrosina is a married woman and the entry of the penis into her vagina would not cause any laceration.

The absence of sperm cells in the vagina is explained by the circumstance that the ejaculation occurred when the penis had already been pulled out. That is why semen was found on Eufrosina's thighs. Ejaculation inside the vagina is not a requisite for the consummation of rape. Mere entry of the male organ into the female organ consummates the rape. (People vs. Canastre, 82 Phil. 480; People vs. Oscar, 48 Phil. 527). Such entry was proven in this case.

Royeras contends that the trial court erred in basing its judgment on the uncorroborated testimony of the complainant. That contention has no merit. Her testimony appears to be veracious. When a woman testifies that she has been raped, she says in effect all that is necessary to show that rape has been committed. If the testimony is not improbable, the defendant may be convicted on the basis of such uncorroborated testimonies (U.S. vs. Ramos, 1 Phil. 81; People vs. Dazo and Tingzon, 58 Phil. 420).

A meticulous and thoughtful review of the evidence drives home the conclusion that appellant's guilt was established beyond reasonable doubt. The Court is convinced that the rape charge was not fabricated. The conduct

of the complainant after the incident shows that she had suffered a grievous wrong in the hands of Royeras. Aside from the force used against her by Royeras and the threat to kill, the emotional factor that facilitated the consummation of the rape was the circumstance that he had already killed a man. The victim surmised that he was capable of killing her if she did not submit to his lustful desire.

"La victima, dice Thoinot, puede ceder ante lo inesperado del ataque, puede ceder por cansancio fisico despues de haber resistido largo tiempo y puede ceder, en fin, para evitar que el violador, llegando a la violencia mas extrema, atente contra su vida" (2 Cuello Calon, Codigo Penal, 1967 12th Ed. 535 note 5).

"Es posible el empleo de fuerza aun cuando en el hecho intervenga un solo culpable. Solo podra estimarse que la victima ha cedido a la fuerza empleada cuando no le sea posible persistir en el resistencia opuesta, mas no es preciso que llegue al completo abatimiento fisico. Este criterio ya fue sostenido por Pacheco y es el mantenido por nuestra jurisprudencia cuando declara que la fuerza no ha de entenderse en terminos tan absolutos que deba tener caracteres de invencible, que sea irresistible sino que se haya empleado la necesaria para lograr el fin propuesto" (2 Cuello Calon, Codigo Penal, 1967 12th Ed. 535-6).

The complaint and information do not qualify the rape as having been committed with the use of a deadly weapon. The penalty of reclusion perpetua imposed by the trial court is in accordance with article 335 of the Revised Penal Code.

WHEREFORE, the trial court's judgment is affirmed with the modification that the indemnity should be raised to five thousand pesos. Costs against the appellant.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, and Fernandez, JJ., concur.
Antonio, J., took no part.

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