

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLO APAT, ACCUSED-APPELLANT.

G.R. No. L-28323. June 29, 1982

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

Appeal from a decision of the Court of First Instance of Zamboanga del Sur convicting defendant-appellant Pablo Apat of the crime of robbery with rape and sentencing him "to RECLUSION PERPETUA, to indemnify the offended woman in the amount of P200.00 which was robbed, to suffer the accessory penalties of the law, and to pay the costs".

The complainant Gregoria Banguiao, 28 years of age when the subject incident occurred on September 9, 1965, is a married woman who lived with her husband and a six-year old son in her house located along the seashore of barrio Tandobuhay, San Pablo, Zamboanga del Sur. Appellant, then 26 years old, is also a married man but was living separate-ly from his wife whom he left behind in Siquijor Island. In barrio Tandobuhay, appellant stayed with a brother-in-law and his sisters in a house located just ten meters away from that of the complainant.

Late in the evening of September 9, 1965, the appellant went up the house of Gregoria who was then sleeping and whose only companion was her six-year old son, her husband having earlier gone out to sea to fish at about 10:00 p.m. While in Gregoria's house, the appellant succeeded in performing sexual intercourse with the complainant.

The complainant and the appellant testified on divergent versions as to the circumstances surrounding the said occurrence. The prosecution, however, presented uncontradicted evidence consisting of the testimonies of Flavio Cordero, chief of police of San Pablo, Zamboanga del Sur; Candido Vios, barrio captain of Tandobuhay; and Pedro Miguela, chief of police of barrio Tandobuhay that early in the morning of September 10, 1965, the complainant reported an incident in which she was supposedly raped and robbed by the appellant in the amount of P200.00. After securing the affidavits of the complainant on September 10, 1965, of her husband Filoteo Aljos on September 11, 1965, of Pedro Miguela and Candido Vios on the same date, chief of police Flavio Cordero filed a complaint under his signature in the Municipal Court of San Pablo, Zamboanga del Sur charging the appellant with the crime of robbery with rape. A second affidavit was taken of the complainant on September 21, 1965 (Exhibit "C"). On October 2, 1965, an amended information was filed under the signature of the complainant (Exhibit "A"). After due preliminary investigation in which the appellant testified, the case was elevated to the Court of First Instance of Zamboanga del Sur wherein an information charging the appellant with the crime of robbery with rape was filed by the Provincial Fiscal on May 12, 1965.

The only direct accounts of the incident are those coming from the mouths of the complainant and the appellant themselves. As earlier mentioned, their respective testimonies are at variance with each other.

The complainant's version has been synthesized in the appellee's brief filed by the Solicitor General thus:

"It appears that in the evening of September 9, 1965, Gregoria Banguiao, a 28-year old housekeeper-wife, was sleeping with her six-year old child, at her house located along the seashore, of barrio Tandobuhay,

Municipality of San Pablo, Zamboanga del Sur (Pages 11-12, t.s.n.). It was moonlight night and the house was illuminated by the light of the moon filtering through the holes of the house (page 12, t.s.n.)."

"At about 12:00 o'clock midnight, appellant Pablo Apat went up the house of complainant while the latter was asleep. She was awakened when she felt the body of appellant on top of her. The sudden realization that the man was not her husband came to complainant when the latter happened to touch the man's face and felt a big mole on the nose (page 13, t.s.n.). But at this instant a hunting knife was posed on complainant's fore-head (page 13, t.s.n.). She was warned not to make any noise or he would kill her. Appellant then took off the woman's pantie and by force and intimidation, his hunting knife still poised on appellant's forehead, he succeeded in having intercourse with her (pages 10-14, 15-16, t.s.n.). Complainant was crying as appellant was removing the pantie. Then appellant sat on her lap as she lied face upward, forcibly opened her legs, and then had intercourse with complainant (pages 14, 16-17, 18, 26, t.s.n.). Her pantie (Exhibit "E") was torn (pages 16-17, 65-66, t.s.n.).

"After the intercourse, appellant inquired where they kept their money, and after complain-ant had pointed to the altar, appellant got their money in the sum of P200.00." (page 19, t.s.n.).

"Immediately after the intercourse, complainant went to the house of their neighbor, Pedro Miguela, who happened to be barrio chief of police to whom she narrated the atrocity. She likewise turned over the scabbard of appellant's hunting knife left at the house (pages 5, 20-21, 28-29, t.s.n.). Pedro Miguela then fetched barrio lieutenant Candido Vios, and the three of them went to the Chief of Police of the Municipality of San Pablo, Flacio L. Cordero arriving thereat at about six o'clock in the morning of September 10, 1965 (pages 3, 21-22, 29-30, t.s.n.)." (Appellee's Brief, pages 2-3, Rollo, page 55).

The narration given by the appellant was set forth in the decision of the trial court as follows:

"On the other hand the defendant testified that in July, 1965, he began residing in Barrio Tandobuhay, where the offended woman also resided. He lived in his uncle's house in that barrio. He first met the offended woman in the following August when he was making a fish corral just a meter away from the house of the offended woman. He worked there almost everyday. Soon, they got acquainted and began conversing with each other as he was working on his fish corral and the woman was sitting, watching him at the balcony of her house one meter away from him."

"In the first week of August, when they had become more intimate, the defendant said: "It is regrettable that we did not meet before." She replied: "You are unfortunate. Had we met before, you might be my husband." He then said: "Why, if we do it now, what is the difference?" She answered: "We cannot do it now. I have a husband."

"Then he requested for a drink and he was invited to go up. He was led to the kitchen; and when she was giving him water, he pulled her towards him by the waist and kissed her on the face. She reciprocated by kissing him on the face. She was then alone in the house. After the incident, she told him: "You are foolish. Somebody might see us."

"He then proceeded downstairs and resumed his work."

"On the second week of August, the offended woman's husband was out in the sea fishing. As he was working in the usual place with the offended woman watching at the balcony as usual, he said that he would go to her house in the night. She replied: "It's up to you. You might be seen by people."

"As agreed upon, he went to her house and they had sexual intercourse."

"They repeated the sexual intercourse in the women's house at midnight by mutual agree-ment in the third week of August. The husband was again away."

"Their third sexual intercourse was at midnight of September 9, 1965. It was at this occasion that the child,

who was sleeping at the right side of the woman, awoke because he was accidentally elbowed by the defendant when the intercourse was going on. The child cried, but the defendant was not sure if he was recognized by the boy."

"This testimony of the defendant is the same story he narrated during the preliminary investigation. (Exhibit "B")." (Rollo, pages 7-8).

Our review of the evidence in the record has led us to disagree with the finding of guilt made by the trial court. We are not convinced that the evidence presented by the prosecution, viewed in the light of admitted and established attendant circumstances, sufficed to prove the guilt of the appellant beyond reasonable doubt of the crime of which he was convicted by the trial court.

The complainant's testimony being the only evidence presented by the prosecution on how the alleged rape and robbery was perpetrated, the guilt of the appellant must have to depend on the inherent credibility of such testimony to the extent of leaving no reasonable doubt that the appellant had indeed committed the acts imputed to him by the complainant. Our adherence to the veracity of her testimony is effectively and gravely deterred by the following factors and circumstances:

1. The claim of appellant that he and Gregoria were lovers even before September 9, 1965, and that his nocturnal visits to her house on those occasions when Gregoria's husband was out fishing in the sea were with her consent remained un rebutted. Under the admitted circumstances, appellant's allegation as to his romantic, albeit, illicit attachment with Gregoria is neither improbable nor unusual. Appellant declared as to specific instances and dates concerning such relationship. Strangely, the prosecution failed to present evidence to rebut or belie the assertions of the appellant in said regard.

2. The conduct of Gregoria during all the time that she was being allegedly raped by the appellant, and subsequently robbed of P200.00 does not inspire belief for being contrary to normal human behavior under similar circumstances. By her own admission, in no instance during the entire incident did Gregoria make an outcry or any expression of protest or anger. She did not cry for help when she noticed a man, not her husband, on top of her; nor when he pulled off her pantie, spread her legs, and did the sexual act on her; nor even after the appellant had left upon satisfying his carnal lust and robbing her of her hard-earned savings of P200.00. It could not be said that she considered making an outcry a useless exercise due to the unavailability of any possible succor from other people. Gregoria has testified that the house of Pedro Miguela, the barrio chief of police, is just a meter away from hers, and that Pedro Miguela was in his house that evening.

Q - "How far is the house of Pedro Miguela from your house?"

A - "About one braza or one fathom because sometimes if we give fish to them, we only hand it to them."

Q - "And Pedro Miguela was in his house when you went there?"

A - "He was there."

Q - "During the intercourse, Pedro Miguela was in his house?"

A - "Yes, he was there." (t.s.n ., page 20).

Even without Gregoria crying for help, the proximity of her house to that of the barrio chief of police would have caused Pedro Miguela to be awakened or attracted by the commotion resulting from a forcible sexual attack being supposedly perpetrated on Gregoria by the herein appellant.

3. The manner by which the appellant allegedly raped Gregoria , as narrated by her, defies the imagination. It may hardly be envisioned how a man can successfully consummate the sexual act on an unwilling woman with his left hand placed over her mouth (supposedly to prevent her from shouting for help) and with his right hand

holding a hunting knife pointed at the woman's forehead and, while so positioned, was able to manage to remove the pantie of the woman, spread her legs, unbutton his short pants, and perform the sexual intercourse.

4. The use of a hunting knife by the appellant to threaten Gregoria into submitting to his carnal lust has not been clearly established by the evidence. It is true that in the statement given by Gregoria on September 10, 1965, as well as in her subsequent affidavit taken on September 21, 1965 (Exhibit "C"), Gregoria mentioned about a scabbard having been seen by her in her house after the appellant left her house in the evening of September 9, 1965. However, such fact alone is not indicative that she submitted to the sexual intercourse due to her fear of a knife being used on her. In the first place, while a scabbard was shown to exist, it was not proved that it belonged to the appellant. Secondly, the said scabbard was not presented in evidence during the preliminary investigation, and it surfaced only during the trial of the case in the court of first instance. Thirdly, assuming that the said scabbard was owned by the appellant, it was not unnatural for him to carry a weapon with him when he went to the house of Gregoria considering that Gregoria's husband might return at any time and catch them in their illicit undertaking. To show, moreover, that he carried a knife is not necessarily proof that he used the same. It may even be said that the leaving behind of the scabbard of the appellant's knife is indicative in itself that the latter left hurriedly at the behest of Gregoria after her six-year old son was awakened, thereby lending credence to the version narrated by the appellant. If Gregoria's version were true, it is not likely that the appellant would have left the scabbard of his knife, there being no reason for him to leave in such a hurry as to leave some evidence of his misdeed behind.

5. Gregoria claimed that the incident in question happened about 12:00 midnight; and that she failed to make an outcry because the appellant was threatening her with a knife and had his left hand over her mouth. Strangely, however, even after the appellant had left, Gregoria made no attempt to shout for help, or raise an alarm so that the malefactor could be pursued and punished for his misdeed. It was not until three hours later, that Gregoria decided to go to her neighbor Pedro Miguela, the barrio chief of police, initially not to complain about the supposed rape and robbery done by the appellant, but to ask help about the stomach ache of her son. Pedro Miguela so testified:

Q - "Do you remember if any incident happened at midnight of September 9, 1965 at Tandobuhay, San Pablo, Zamboanga del Sur?"

A - "Yes, sir."

Q - "What was that incident about, please tell the Honorable Court?"

A - "The incident that happened between Gregoria Banguiao and Pablo Apat in the early part of the night, I do not know anything about that. But at about 3:00 o'clock dawn of the same night I heard somebody calling: " Manay, permit us to come up because my child has stomachache." (ts.s.n. page 28).

The time gap between the incident and the going of Gregorio to the house of Pedro Miguela would appear to be more significant it, as testified to by Miguela, Gregoria claimed to have been raped and robbed at 9:00 o'clock, and not 12:00 o'clock midnight.

Q - "What did she explain to the Chief of Police?"

A - "She explained the Chief of Police that at about nine o'clock of the night, Pablo Apat went up her house and forced her and took her money." (ts.s.n. , page 31).

6. The supposed forcible taking of P200.00 from Gregoria by the appellant after the act of sexual intercourse having been consummated rings with even lesser sincerity than the alleged rape. We are at a loss to ascertain whether, under the theory of the prosecution, the appellant went to the house of Gregoria to take her money or to savor her womanhood. The trial court was of the impression that it was for the latter purpose, reasoning that "the long absence of his wife must have prompted him to commit the beastly act." (Rollo, page 8). If this is so, we are not easily induced to believe that after accomplishing such desire, the appellant would have the temerity

nor the inclination to rob the woman who had given him the sexual satisfaction that he craved for. Our faith in human nature repels such a suggestion.

7. Gregoria submitted herself to a medical and physical examination by Dr. Roger Parco, Rural Health Physi-cian of San Pablo, Zamboanga del Sur. The result of said examination (Exhibit "I"), confirmed by Dr. Parco on the witness stand, clearly indicates the absence of any force exerted on Gregoria during the act of intercourse. There was no sign of injury in her genitalia nor her thighs. Not even a scar or contusion which would have been caused if there was indeed force exerted on her, including the alleged sitting by the appellant on her thighs.

8. We are not unmindful of the fact that Gregoria complained to the barrio authorities, and later to the municipal authorities, about the alleged rape and robbery the day following the incident. We, however, cannot discount the truth of the claim of the appellant that the said act of Gregoria was prompted by a desire to cover-up her liaison with the appellant which had been discovered by her six-year old son who was awakened when the appellant accidentally elbowed him during the process of his sexual intercourse with Gregoria. Such intention of Gregoria could easily have been the reason why she failed to make an outcry for succor even after the appellant had left her house, and her hesitancy and unexplained delay in reporting the supposed rape and robbery to the barrio chief of police only after at least three hours later.

9. The trial court had stated in its decision that "On the following day the defendant went to the mountains claiming he went there to cut bamboos for his fish corral." (Rollo, page 9). Seemingly, it is implied that the appellant exhibited his consciousness of guilt by resorting to flight. Such an inference is not justified. The appellant explained why he had to go to the mountains, and his explanation remained un rebutted. Moreover, the record shows that after the appellant learned of the charge filed by Gregoria against him, and even long before a warrant was issued for his arrest, he voluntarily surrendered. At the bottom of the warrant of arrest issued by Municipal Judge Buenaventura U. Banay dated September 21, 1965, the following appears:

"Respectfully returned to the Municipal Judge with the information that the same could no longer be served upon the person cited therein for the reason of the fact that person cited above already voluntarily surrendered on September 12, 1965.

(Sgd .) FLAVIO L. CORDERO

Chief of Police"

(Record, page 8).

10. The voluntary surrender of the appellant two days after the incident dissipates any conjecture that he raped and robbed Gregoria despite their being close neighbors and there being no possible doubt as to his identity, because he intended to leave barrio Tandobuhay for good. His courage to face his accuser, inspite of the opportunity to flee and live elsewhere, he not being a permanent resident in said barrio, speaks eloquently of his belief in his innocence of any wrong committed against Gregoria, especially of a crime as grave as rape with robbery.

WHEREFORE, the decision of the trial court is hereby REVERSED and SET ASIDE, and the accused-appellant ACQUITTED of the charge, with costs de oficio. His immediate release from confinement is hereby ordered, unless he is being held on other legal grounds.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, and Gutierrez, Jr., JJ., concur.

Makasiar, J., no part.

Melencio-Herrera, J., on leave.

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