

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ABELARDO BALBUENA AND JUANITO TORRES,
ACCUSED-APPELLANTS.**

G.R. Nos. L-44859-60. April 27, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

Appeal from the decision of the Court of First Instance of Rizal, Branch XII, Caloocan City, promulgated on August 6, 1976, in Criminal Cases Nos. C-6848 (75) and C-6849 (75) convicting herein accused Abelardo Balbuena and Juanito Torres for the crime of RAPE and sentencing each of them to suffer in each case the penalty of reclusion perpetua and to pay the costs.

The two separate informations dated November 20, 1975 filed by Asst. City Fiscal Romeo C. Cortes upon the complaint of the offended party, Elvira Polintan, single, 20 years of age, a senior criminology student of the Philippine College of Criminology, against the two accused, read as follows:

CRIMINAL CASE No. C-6848 (75)

"That on or about the 28th day of August, 1975, in the City of Caloocan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Abelardo Balbuena y Garcia, conspiring and confederating with Juanito Torres y Villanueva, by means of force, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant Elvira Polintan against the latter's will and consent.

"Contrary to law."

CRIMINAL CASE NO. 6849 (75)

"That on or about the 28th day of August, 1975, in the City of Caloocan, Philippines and within the jurisdiction of this Honorable Court, the said accused Juanito Torres y Villanueva, conspiring and confederating with Abelardo Balbuena y Garcia, by means of force, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant Elvira Polintan against the latter's will and consent.

"Contrary to law."

Upon arraignment, both accused, assisted by counsel, waived the reading of the information and entered the plea of not guilty. Upon motion of the Fiscal, on the ground that the complainant in both cases is one and the same person, the court conducted a joint trial of the two cases.

The evidence of the prosecution as summarized in the People's Brief established that:

"On August 28, 1975, at around 10:00 o'clock in the evening, complainant Elvira Polintan was in an apartment located at P. Zamora St., Caloocan City, talking with appellant Juanito Torres, a friend of long standing (pp. 1-2, t.s.n., Feb. 10, 1976). After a while, some friends of Torres arrived. Torres and his friends agreed to drink liquor. They invited Elvira Polintan to join them (p. 2, t.s.n., id.). Because Elvira had not seen appellant Torres

for quite sometime, she accepted the invitation. They decided to hold the drinking party at the apartment of appellant Abelardo Balbuena which was also situated at P. Zamora St., Caloocan City, and adjacent to the house of appellant Juanito Torres (Ibid.). The ground floor of Balbuena's apartment was formerly a billiard hall but was no longer used as such (p. 10, t.s.n., id.). Inside the billiard hall where the drinking party was held, Torres introduced Balbuena to Elvira Polintan (Ibid.). Aside from the two appellants and Elvira Polintan there were three other male persons in the group (p. 2, t.s.n., id.). They drank gin. (Ibid.)

"After Elvira Polintan consumed a half glass of gin, she felt dizzy (Ibid.). She asked permission from the group that she would take a rest. She lay down in a bench inside the billiard hall (p. 5, t.s.n., Feb. 24, 1976). Then, appellant Balbuena undressed the complainant by removing her pants and briefs (pp. 4, 19, 21, t.s.n., id.) and spread her legs wide apart (p. 22, t.s.n., id.). At this juncture, appellant Torres was holding Elvira's hands. Balbuena then went on top of the billiard table (p. 16, t.s.n., Feb. 24, 1976). In the meantime, complainant feebly tried to extricate herself even as appellant Balbuena kept on threatening her and her family with death if she would not yield her body to him (Ibid.). Finally, Balbuena succeeded in having carnal knowledge with complainant (pp. 22-23, t.s.n., id.).

"After appellant Balbuena had satisfied his lustful desires, he went down the billiard table. Immediately thereafter, appellant Torres went up the billiard table. Appellant Balbuena held complainant's hands (p. 4, t.s.n., Feb. 16, 1976). Despite complainant's continued struggle by twisting her body and kicking her feet, she simply could not overpower the appellants, so that appellant Torres also succeeded in consummating the sexual act with her (p. 5, t.s.n., id.). In the course of the sexual act, appellant Balbuena covered the mouth of complainant to prevent her from shouting (p. 5, t.s.n., id.). After she was raped, she sat down on the corner and cried. Appellant Balbuena told her 'remember what I told you (referring to the threat that he will kill complainant and her parents).' (Ibid.). After about five minutes and when the attention of the appellants were distracted, complainant ran away and proceeded to her house. (Ibid.).

"On October 19, 1975, she related her sad experience to her mother (p. 7, t.s.n., Feb. 10, 1976). The following day, October 20, 1975, she went to the police headquarters at Caloocan City and gave a statement (Exhibit "A") narrating the incident of August 28, 1975 (p. 6, t.s.n., id.). Also on October 20, 1975, she filed a complaint (Exhibits "B" and "C") for rape in the City Fiscal's Office at Caloocan City against the appellants.

"On the same date, complainant was examined by Dr. Maximo Reyes, medico-legal officer of the National Bureau of Investigation who issued a medical certificate (Exhibit "D", p. 46, rec.) with the following findings:

'General Physical Examination:

Height: 156 cm. Weight: 96 lbs.

Normally developed, fairly nourished, conscious, coherent, cooperative subject.

Breast fully developed, hemispherical and soft. Areola, dark brown, 3.0 cm. in diameter.

No evident sign of extragenital physical injury noted on the body of the subject.

Genital Examination:

Pubic hairs, fully grown and abundant. Labia majora and minora both gaping. Fourchette, lax. Vestibular mucosa, pinkish. Hymen, thick, moderately wide, with multiple natural notches and a healed superficial laceration at 5:00 o'clock position corresponding to the face of the watch; edges beginning to round up and hardly coeptable. Hymenal orifice originally annular and admits a tube 3.0 cm. in diameter with moderate resistance. Rugosities, shallow, and vaginal walls lax.

CONCLUSIONS:

1. No evident sign of extragenital physical injury noted on the body of the subject.
2. She could have had sexual intercourse with a man on or about the alleged date of commission.""[1]

Both accused-appellants rest their defense on denial and alibi.

Accused Juanito Torres testified that he had known the complainant for the past three years prior to the alleged commission of rape as she used to be with him in going places and having occasional drinking sprees of beer, gin and coke, "pagka may katuwaan", with a group of male companions[2] ; that at about 4:00 o'clock in the afternoon of August 28, 1975, he saw complainant and requested her to accompany him to his cousin who resides at Gen. Luna Street, Caloocan City, to request his cousin to write a letter for him, and she acceded to come along[3] ; that however, he went alone to see his cousin while complainant stayed behind at the fire department and then he went home without her at about 6:00 o'clock in the afternoon of the same day.[4]

In denying any participation in the rape charge, accused Torres disclaimed his presence at the drinking party held inside the billiard hall. He denied that he usually drives a public utility jeepney from the corner of 10th Avenue, Rizal Avenue Extension, up to Biglang-Awa from 6:00 o'clock in the evening up to 12:00 o'clock midnight.[5] He declared further that complainant, a tomboy, had a previous amorous relation with his cousin, Rhodora Torres, and that she maintains a grudge against him for advising his cousin to part ways with her which resulted in the separation of his cousin and the complainant.[6] He said that after August 28, 1975, he had on seven or nine occasions seen the complainant who when greeted simply ignored him.[7]

On the other hand, accused Abelardo Balbuena also denied the accusation of rape against him and his participation at the drinking spree with complainant. He testified that he first met complainant upon being introduced to each other on August 28, 1975 at his father's billiard hall situated at P. Zamora Street, Caloocan City; that after conversing with her for about five minutes, he left complainant in the company of three male companions and that they had a drinking spree at the billiard hall. They went to the upper floor of their house to eat supper and only came down later to ask her and her companions what time they would leave the house, to which she answered that it would not take long, and immediately thereafter he went upstairs again to do something else.[8]

As indicated earlier, both accused were found guilty and sentenced in each case to suffer the penalty of reclusion perpetua and to pay the costs.

Appealing to this Court, accused-appellants submit the following assignment of errors:

I

The lower court erred in not declaring Elvira Polintan as an incredible complaining witness in her narration of being raped by the accused.

II

The lower court erred in not declaring Elvira Polintan as a willing victim in the crime of rape, hence, the element of force is absolutely wanting.

In raising the first assigned error, appellants contend that the lower court should have declared complainant Elvira Polintan as an incredible witness in her narration of being raped by the accused, pointing out that there was a delay of more than one month before the incident was reported to the police authorities; that complainant used to

go with male friends, imbibing alcoholic beverages; that no bodily injuries were noted in the medical certificate (Exhibit "D"); that her dress or underwear was not torn; and that she was able to give a detailed description of what transpired during the night including the acts and movements of the appellants.

On the question of delay which the defense submits to be construed to mean that the Court should doubt the very existence of the commission of the crime, We agree and affirm the ruling of the trial court that the delay in filing the complaint was reasonable. The reasoning of the Court that "(i)t is not easy for a Filipina to easily decide whether to come out in the open in a situation where public contempt and ridicule would result in the prosecution of a case. The very fact that she came forward in the case is persuasion that the act had been committed. The complainant stands to gain nothing with her revelation and the consequent punishment of the accused," is well-grounded, considering the innate modesty of Filipina womanhood and the inherent reluctance of the Filipino family to be exposed to the rigors of a long drawn out trial scandalizing the family's good name and honor.

It is quite true that the unexplained delay in the filing of a criminal complaint for rape may result in an adverse inference against the complainant's sincerity and credibility, as in *People vs. Pimentel*, 118 SCRA 695, where the formal complaint was lodged against appellant after the lapse of 39 days and the Court said it taxes one's credibility that complainant could be able, after a long period of time, to feign a composed and serene posture after the harrowing experience she had undergone. But that is not true in the instant case. The victim herein has rendered a credible and satisfactory account for her delay in reporting the incident to her mother and in seeking the help of the authorities. The complainant unequivocally testified that she was fearful over the threats of the accused-appellants that they would kill her and her parents should she report the matter to the police, especially so since she resides near the houses of the accused-appellants and she has to pass their houses in going out.[9] She also expressed her worry that her ongoing classes at school would be disrupted upon her filing of the complaint.[10] The fear and the shock engendered by the threats as well as her desire to avoid further shame is more than sufficient to restrain the offended party from immediately exposing her sad experience.[11]

We reject appellants' contention that complainant Elvira Polintan is an incredible witness because she used to go with male friends, imbibing alcoholic beverages. This is not unusual, considering that complainant is admittedly a "tomboy". As observed by the trial court, the demeanor of the complainant at the witness stand shows:

"Admittedly, the complainant is a 'tomboy'. Her appearance is most revealing. She is not exactly ugly. These considerations notwithstanding, and perusing the background leading to the incidents in question, it cannot be disputed that the two accused were at the time of the incident, drunk. Such being their state, it is not improbable to say that the physical appearance of the woman would not bar these persons from the commission of the offense." (See CFI Decision)

And neither the absence of any injury being noted in the medical certificate nor that her dress or underwear was not torn supports appellants' submission that complainant is an incredible witness. The absence of any injury is explained by the fact that the physical examination of the victim was made after more than one month had elapsed from the commission of the crime and moreover, We find no evidence that complainant was injured in her struggle to resist the acts of the accused. And there was no torn dress or underwear because she was then wearing pants brief at the time of the incident.[12]

The general rule on the credibility of the victim's testimony in a rape case is well-stated in *People vs. Pimentel*, 118 SCRA 695 where the Court, speaking through Justice Escolin, held as follows:

"In weighing the testimony of the complainant in an accusation for rape, the rule often applied by the courts is that the testimony of the victim, whose chastity has not been questioned, is generally accorded credence because such offended party would not have fabricated facts that could bring shame and dishonor on her. Nor would she disclose her humiliating experience at a public trial, and thus give rise to gossip and slander, unless

her motive was to bring to justice the person who grievously wronged her."

Such a rule has been established because the detestable crime of rape in which a man shows his most heinous side is one of the hardest to prove. Indeed, the testimony of the victim most often is the only one available to prove directly its commission and corroboration by other witnesses would in certain cases place a serious doubt as to the probability of its commission. When a woman testifies that she has been raped, she says all that need to be said to signify that this crime has been committed. (U.S. vs. Ramos, 1 Phil. 81).

In its decision, the trial court said that it "has gone at length with the testimony of Elvira Polintan in order to determine whether the same is conclusive, logical and probable. The complainant when she testified before the court to narrate what had happened on the night of August 28, 1975, appeared to be credible as a witness, and her account of the incident likewise left in the judicial mind an affirmative answer whether a woman of complainant's stature could be the object of this heinous offense." The court further added: "Then too, the complainant narrated the incident in a straight forward and convincing manner and despite the lengthy cross-examination to which she has been put too, she was steadfast in the fact that she was the victim of rape. Moreover, the very fact that she came out forward in this case is in itself a silent but persuasive evidence of an outrage done upon her honor. Considering these evidences on record, there is nothing in the defense evidence which points out convincingly why Elvira Polintan should corrupt the truth and put the lives of these two accused in jeopardy."

This finding of the trial court on the credibility of the complaining witness is entitled to the highest respect upon this Tribunal, and We will not disturb the same.

Moreover, We find no reason, and none is advanced by appellant Balbuena why complainant should implicate him in the case considering that he came to know the complainant for the first time during the incident. The motive imputed by appellant Torres to the complainant in implicating the appellant in the charge of rape which is that Torres told his cousin, Rhodora Torres, to sever her relationship with complainant, is indeed too flimsy to be accepted because the crime of rape exposes not only the accused but also the complainant to public ridicule and shame.

We agree with the trial court in its conclusion that "(t)he sum total of all the foregoing considerations is the fact that the court believes that essential elements constitutive of the crime of rape had been established by the prosecution peradventure of doubt."

The defense of the accused is one of denial as pointed out earlier in this decision, which is inherently weak, and more than that, the testimony of the accused Torres that he was with the complainant on August 28, 1975 at about 4:00 o'clock in the afternoon and not in the evening, is itself belied by the other accused Balbuena who admitted that Torres was present at the drinking spree on August 28, 1975. And in addition to the above contradiction, the defense of the accused is wanting in material corroboration.

As to the second assigned error, We find the same to be without merit. Complainant is a "tomboy" and as such, she is sexually attracted to persons of her own sex rather than to the male specie. She would not willingly submit herself to a sexual intercourse with a male person as suggested by the appellants. The evidence is clear that appellants employed force in consummating the crime of rape. From the bench where she was lying down, she was pulled to the billiard table and bodily raised on top of the table where she was forced to lie down. Both accused held her at the wrist and one of them held her by the feet. She fought and struggled with them (nagpapapalag). On top of the billiard table, Torres held both of her hands while Balbuena laid on top of her and sexually abused her. After that, Balbuena went down from the table and Torres climbed while the other held both of the victim's hands and similarly, Torres was able to rape her.

That the guilt of the accused for the crime of rape has been proved beyond reasonable doubt is clear and the decision being in accordance with law and the evidence, the same must be affirmed.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the judgment of conviction against the accused-appellants Abelardo Balbuena y Garcia and Juanito Torres y Villanueva and the penalty of reclusion perpetua in Criminal Case No. C-6848 and Criminal Case No. C-6849 for each of the accused is hereby **AFFIRMED**. Costs de oficio. **SO ORDERED**.

Makasiar, (Chairman), Aquino, De Castro, and Escolin, JJ., concur.

Concepcion, Jr., J., votes for acquittal.

Abad Santos, J., see dissenting opinion.

[1] People's Brief, pp. 1-6, Rollo, p. 60.

[2] TSN, p. 6, April 7, 1976.

[3] TSN, p. 5, id.; Trial Court's Decision, p. 5.

[4] TSN, p. 6, id.

[5] TSN, pp. 13-14, April 7, 1976.

[6] TSN, pp. 9-10, id.

[7] TSN, p. 10, id.

[8] TSN, pp. 3-4, 7, May 3, 1976.

[9] TSN, Feb. 10, 1976, pp. 5-7; TSN, Mar. 15, 1976, pp. 11-13.

[10] TSN, Feb. 10, 1976, p. 6.

[11] People vs. Garcia, 105 SCRA 6; People vs. Santos, 94 SCRA 277.

[12] TSN, Feb. 10, 1976, p. 3.

DISSENTING OPINION

ABAD SANTOS, J.:

Elvira Polintan was 20 years old in August, 1975. By her own testimony she joined a group of men in a former billiard hall for the purpose of drinking "cuatro cantos" gin. All the men, except for appellant Juanito Torres, were apparently strangers to her. Is this normal behaviour for a Filipino woman of her age? I do not think so. The Filipino woman as a rule is an abstainer even after she has reached maturity. I have to conclude that Elvira's conduct casts a dark cloud on her claim that she was raped successively by Torres and Abelardo Balbuena.

If in fact there was sex, "It could very well be that the euphoric feeling induced by this young girl's imbibing tuba wine led to the relaxation of what could be inhibiting factors." (People vs. Joven, L-36022, May 22, 1975, 64 SCRA 126, 128.) In other words if there was sex, it was with Elvira's consent. Other circumstances support the consensual view:

1. There was no determined resistance by Elvira nor did she shout for help considering that there were other

persons in the premises.

2. She had no signs of extragenital injury nor any kind of injury for that matter. While it is true that there can be a conviction for rape even absent signs of injury still there must be other convincing evidence. In the case at bar there is none other than the say so of the complainant.

3. The unreasonable delay in the filing of the complaint against the appellants. One month and 23 days elapsed before Elvira complained that she had been raped and her lame excuse for the delay was that she was threatened with death by the appellants which she ignored after all.

It is usually said in rape cases that the Filipino woman is modest and shy so that she will not publicly complain of having been raped and thereby expose herself to shame and ridicule unless she was in fact raped. I accept this proposition - for a typical Filipino woman. But Elvira is not a typical Filipino woman. Not yet 21 she was already a guzzler, not just of ladies' drinks, but of full-strength distilled spirits like gin.

The appellants have put up the defense of denial and alibi. This defense can well be rejected but it does not follow that they are guilty. For it is elementary that the prosecution must rely on the strength of its evidence and not on the weakness of the defense. In the instant case I do not believe that the prosecution has overcome the presumption of innocence which the law accords to the accused.

I vote for acquittal.

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