

PEOPLE OF THE PHILIPINES, PLAINTIFF-APPELLEE, VS. ERNESTO SISON Y AVILES, DEFENDANT-APPELLANT.

G.R. No. L-45857. October 27, 1983

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

In her sworn complaint, complainant Violeta Begino y Aquino accused defendant-appellant of forcible abduction with rape allegedly committed as follows:

"That on or about the 15th day of July, 1973, in Quezon City, Philippines, the above-named accused with lewd design, did, then and there wilfully, unlaw-fully and feloniously, by means of force and intimidation abduct the undersigned, by then and there forcibly dragging her into a tricycle, after which the undersigned was brought to a house located at Novaliches, this City where said accused by means of force and intimidation had carnal knowledge of the undersigned, all against the will and without the consent of the undersigned, to her damage and prejudice in such amount as may be awarded to her under the provisions of the Civil Code.

"Contrary to law" (p. 2, rec.).

The trial court convicted him of the charge and sentenced him to suffer the penalty of reclusion perpetua with accessories of the law, to indemnify the complainant in the sum of P10,000.00 as moral damages and to pay the costs, crediting him however with the entire period of his temporary detention.

Complainant Violeta Begino, a native of Cabcab, Catanduanes, was about 15 years and 10 months old on July 15, 1973, a Sunday. About 4 feet and 7 inches tall and weighing about 93 lbs., she was the housemaid of Jose Baruela of Galas, Quezon City.

Between 3 and 4 o'clock in the afternoon of Sunday, July 15, 1973, Violeta was standing at the corner of Luzon Avenue and Union Civica St., Galas, Quezon City, waiting for a ride to Quiapo, Manila to buy slippers for her employer. Appellant Ernesto Sison, then about 23 years old, who was courting her, approached her and invited her to take the tricycle he was then driving. When she refused, appellant allegedly drew his 7-inch knife and poked it at her abdomen, threatening to kill her if she did not board his tricycle. He allegedly seized her and forced her to get into the tricycle.

This is quite incredible because, on such Sunday afternoon, with many people passing by or idling in the vicinity, as Galas is thickly populated by low-income and middle-class groups -- of which fact the Supreme Court can take judicial notice -- she could have resisted and shouted for help. It was not easy for appellant to grab her and force her into the tricycle without being noticed by passers-by and by-standers. She claims that after she was seated inside the tricycle, appellant drove his tricycle to the España Rotonda, a busy intersection of España St., Manila, Quezon Avenue, España Extension (now E. Rodriguez Ave.), Mayon St., and Pulong St. going towards Galas, Quezon City. Said rotonda is over one kilometer from Galas, with several street corners to pass along the way.

With appellant driving the tricycle, complainant could have shouted for help while seated in the rear compartment

for passengers behind him, since as aforesaid, from the corner where she was allegedly forced to board the tricycle up to España Rotonda is quite a distance, with so many houses and several persons along the way. And children would be playing on the streets. Or she could have jumped out of the tricycle for a tricycle does not run fast and the tricycle is always open at its right side just behind appellant who was on the driver's seat. Appellant could not be poking a knife with one hand at Violeta and driving the tricycle with the other hand.

From the España Rotonda, they took a passenger jeepney for Balintawak, Quezon City. They were allegedly the only passengers of the jeepney, with appellant holding her hands and telling her that he would kill her if she tried to go home. From España Rotonda to Balintawak is a distance of about five kilometers. Being a passenger jeepney, it presumably took the usual passenger jeepney routes. It would be unbelievable that all throughout the distance of about five kilometers, a Sunday afternoon, no other passenger boarded the jeepney between España Rotonda and Balintawak. The route of said jeepney must pass through Mayon St. towards North Cemetery beside Balintawak. But even assuming that they were the lone passengers of the jeepney through-out the distance she could have shouted for help or created a commotion to alert the jeepney driver. It is also possible that she must have seen police-men along the route, especially near the gate of the North Cemetery. The various jeepney routes from Quezon City to North Cemetery include Mayor Norberto Amoranto St. (formerly Retiro), Del Monte Avenue, Dapitan, LaongLaan St., and from Manila to the North Cemetery then to Balintawak, via Dimasalang St., and coming from Rizal Avenue Extension and passing the Chinese General Hospital via Blumentritt. Upon reaching the busy intersection in front of the North Cemetery gate, with a lot of people around, including employees of the gas station just across the gate of the North Cemetery, she could have screamed for help, but she did not.

At Balintawak, appellant allegedly brought her to the house of his aunt, to whom he allegedly introduced her as his girl-friend. After talking to her aunt, he and complainant left the house and rode in a passenger jeepney bound for Novaliches, Quezon City. There were other passengers inside the jeepney but she did not make any outcry nor ask help from the other passengers during that long trip from Balintawak to Novaliches, which is a lot farther than from España Rotonda to Balintawak. Balintawak is also a busy street all the way to Clover Leaf (the hub connecting to Novaliches) and there are many houses and shops along the way -- more so upon reaching the busy market near the Clover Leaf. And then from Clover Leaf through Quirino Avenue towards Nova-liches, there must have been numerous persons that Sunday afternoon, because Quirino Avenue is likewise a busy avenue, being the only route to Novaliches from the Clover Leaf and the traffic along that thoroughfare is heavy at all hours of the day because of the numerous passenger buses, jeepneys, cargo trucks, and private cars on the road. But she did not cry for help.

At Novaliches, appellant led her to the house of another aunt, Maria Aviles Reyes and took her purse containing P12.00. After eating their supper, appellant allegedly brought her to a room and ordered her to lie down. She resisted and appellant slapped her repeatedly. She became unconscious and upon regaining consciousness, she found herself naked with appellant on top of her and his penis inside her vagina "up to her stomach." If she resisted as she claimed, there should have been some commotion and maybe pieces of furniture like chairs and tables being pushed or the sound of shuffling feet, accompanied by her cries or screaming indicating resistance. When he slapped her repeatedly, she must have shouted in pain and even cursed him aloud with the usual vulgar invectives. With such commotion, screaming, cries of pain and vulgar curses, it is unthinkable that the aunt and the rest of the inmates of the house would not have heard the same. They could have been curious about the commotion and could have frustrated whatever criminal intention appellant might have towards her.

She alleged that he had sexual intercourse with her three times that July 15 even as she was experiencing pain. The following day (July 16), he had sexual intercourse with her four times. Then on the third day (July 17), he did

the same to her. They stayed in Novaliches from July 15 to July 21, 1973. Never did she complain to his aunt or to the other inmates of the house about what appellant did to her. During those six days, she must have gone out of the room to eat or to attend to personal necessities in the bathroom. During those six days too, his aunt and the other members of the family would have noticed her painful expression or her moaning in pain and would have asked her the cause of the same.

In the afternoon of July 21, 1973, appellant, with his mother and his aunt Maria, brought Violeta to his house in Sampaloc, Manila, and from there, to Violeta's mother at 11-B Luzon Avenue, Galas, Quezon City. All the mother did was to slap her.

It should be stressed, as heretofore intimated, that this Court sitting in Metro Manila, can take judicial notice of the geography of said metropolis, and the approximate distance from Galas to España Rotonda, from España Rotonda to Balintawak, and from Balintawak to Novaliches, the passenger routes to said place, the nature of traffic along said routes, the heavy population in Metropolitan Manila, and the habits of the residents therein.

There is nothing in the record to indicate as to why her mother and her employer did not look for her during the six days that she was missing from the house of her employer and why they did not report to the police authorities said fact of her being missing for almost a week. Neither is there any intimation that her employer inquired about the money he gave to her to purchase slippers, which is quite unnatural.

All the foregoing circumstances not only negate the conclusion that she was sexually assaulted by appellant against her will, but also affirm that she went willingly with the appellant and submitted to his lewd design.

Consequently, the only possible conclusion is that she voluntarily went with appellant on that six-day tryst with him, for which appellant could have been convicted of consented abduction as Violeta was then over 12 but under 18 years of age (Art. 343, R.P.C.), if the complaint included the essential elements of abduction with consent (Valdepeña vs. People, 16 SCRA 871, April 30, 1966; U.S. vs. Asuncion, 31 Phil. 614, Oct. 2, 1915). Unfortunately, the complaint as aforequoted does not allege that the offended party was a virgin, over 12 years and under 18 years of age (Barba vs. People, 89 SCRA 112, March 28, 1979; People vs. Castro, 58 SCRA 473, Aug. 19, 1974; People vs. Samillano, 56 SCRA 573, April 22, 1974; People vs. Magat, 94 Phil. 118, Dec. 29, 1953).

Hence, the appellant should be acquitted of the charge.

WHEREFORE, APPELLANT ERNESTO SISON Y AVILES IS HEREBY ACQUITTED. WITH COSTS DE OFFICIO.

HIS IMMEDIATE RELEASE IS HEREBY ORDERED UNLESS HE IS HELD FOR SOME OTHER VALID CHARGES.

Fernando, C.J., Teehankee, Concepcion, Jr., Guerrero, Plana, Escolin, Relova, and Gutierrez, Jr., JJ., concur.
Abad Santos and Melencio-Herrera, JJ., join J. Aquino in his dissent.
De Castro, J., on leave.

People vs Sison y Aviles : L-45857 : October 27, 1983 : J. Aquino : En Banc : Dissenting Opinion 150 Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:*{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

AQUINO, J.:

I dissent. According to the prosecution's evidence, on Sunday, July 15, 1973, between three and four o'clock in the afternoon, Violeta Begino, a fifteen-year-ten-month-old housemaid (born in Cabcab, Catanduanes on September 14, 1957), about four feet and eight inches tall, weighing ninety-three pounds, was standing at the corner of Luzon Avenue and Union Civica Street, Galas, Quezon City, waiting for a ride to Quiapo, Manila because her master, Jose Baruela, had asked her to buy slippers.

At that moment, Ernesto Sison, 23, who was courting Violeta (she had known him for three days) approached her and advised her to take the tricycle which he was driving. When Violeta rejected his offer, Sison whipped out a seven-inch long knife and pointed it at her abdomen (Violeta making a demonstration as to the poking of the knife), telling her that he would kill her if she did not board his tricycle. He seized her and forced her to get into the tricycle.

Sison then drove the tricycle to the España rotunda (the intersection of Quezon Avenue, España Extension and Mayon Street) and alighted. They took a passenger jeepney for Balintawak, Quezon City. They were the only passengers. Sison held her hands. He told her that he would kill her if she tried to go home.

Sison took Violeta to the house of his aunt in Balintawak, introducing her to his aunt as his girl friend. Sison talked with his aunt. Later, he and Violeta left the house and rode in a jeepney bound for Novaliches, Quezon City. Although there were many passengers in-side the jeepney, Violeta did not make any outcry alle-gedly because of fear that Sison would kill her if she did.

In Novaliches, Sison took Violeta to the house of another aunt, Maria Aviles Reyes. Sison got Violeta's purse containing twelve pesos. They ate their supper there. Afterwards, Sison took her to a room and ordered her to lie down. She resisted but Sison slapped her repeatedly. She became unconscious. When she regained consciousness, she realized that she was naked and Sison was on top of her and that his penis was inside her vagina ("up to my stomach").

She tried to extricate herself but she was not successful "because his sex organ was already inside" her vagina and he was holding her arms and legs. He warned her that he would kill her if she did not submit to his desires. He made push-and-pull movements. He kissed her many times on the mouth. It was her first sexual intercourse.

She experienced much pain in her organ. Sison had sexual intercourse with her three times on that occasion. The following day, he had sexual congress with her four times. He used her also on the third day. He did not touch her on the fourth day because her menstruation started at that time. They stayed in Novaliches up to July 21, 1973.

In the afternoon of that date, Sison, together with his mother and his aunt Maria, took Violeta to Sison's house in Sampaloc, Manila. Later, they delivered Violeta to her mother at her residence, 11-B Luzon Avenue, Galas. Upstairs, her mother slapped Violeta. She told her mother she was abused by Sison. In the morning of July 22, 1973, Violeta executed her statement at Precinct 4 of the Quezon City Police. She narrated what Sison did to her from the afternoon of July 15 up to July 21.*

On July 23, 1973, Violeta was examined by a medico-legal officer of Camp Crame. He found "no external signs of recent application of any form of trauma" but her genitals showed "shallow, healed lacerations at 3, 7 and 9 o'clock positions" caused possibly by sexual intercourse. Her vaginal orifice offered moderate resistance to the introduction of the examining index finger and the virgin-sized speculum (Exh. C).

In his defense, Sison denied that he forced Violeta to ride in his tricycle in the afternoon of July 15, 1973, that he

brought her to Balintawak and Novaliches, and that he raped her in the house of his aunt. He declared that he got acquainted with Violeta at the Marilou Beer House at Luzon Avenue, Galas where she worked as a waitress.

He had sexual congress with Violeta in the later part of 1972 in the massage clinic at Tetuan Street, Manila where her sister worked. He stayed with his aunt at Novaliches three or four months prior to July 21, 1973 because his mother was angry with him.

He allegedly did not give his earnings as a tricycle driver to his mother. He used to give money to Violeta's mother in Violeta's presence. In the morning of July 21, 1973 Violeta went to the Novaliches house of his aunt to ask Sison to marry her. After lunch, Sison and his aunt brought Violeta to her house in Galas. Violeta's mother pulled her hair and scolded her.

On that occasion, Sison wanted to ask the consent of Violeta's parents in order to marry her although Violeta's mother did not want him to be her son-in-law. Sison and his aunt left the house after about twenty minutes because Violeta's mother did not attend to them. The trial court did not believe the defense of Sison.

In this appeal, appellant's counsel, who was not Sison's lawyer during the trial, contends that the prior, contemporaneous and subsequent events showed consent on Violeta's part to the acts of sexual intercourse and that the trial court erred in giving credence to Violeta's uncorroborated testimony, in finding that threats, force and intimidation were employed by Sison, in not finding that Violeta filed the criminal action when her offer to marry Sison was rejected and in not giving weight to the testimony of Sison's aunt.

Sison's counsel, like the trial court, did not believe Sison's defense. He ignored appellant's version of the case (albeit in good faith) and, instead, set forth the "facts of the case" "sufficiently established" by both the prosecution and the defense.

Appellant's counsel, contradicting the denials made by accused Sison, admitted (1) that Sison brought Violeta in his tricycle to the España rotonda, (2) that he was with her in a passenger jeep going to Balintawak, (3) that Violeta was introduced to Sison's aunt as his girl friend, (4) that Sison and Violeta rode in a jeepney in going to the house of Sison's other aunt in Novaliches and (5) that Sison and Violeta had sexual intercourse for three days in Novaliches. He theorized that she went with Sison voluntarily.

Defense counsel disregarded the fact that Violeta, a fifteen-year-old, ninety-three pound, four-feet-and-eight-inch teenager, during all the time that she was with Sison, was afraid of him because of the threats to kill her which he had made and because of his obvious physical superiority. See *People vs. Bulaong*, L-37836, July 31, 1981, 106 SCRA 344; *People vs. Manguiat and Sanqui*, 51 Phil. 406.

The case is really a matter of credibility: whether the testimonies of Violeta and the medico-legal officer should prevail over the testimonies of Sison and his aunt.

My view is that the trial court did not err in finding that Sison is guilty of forcible abduction with rape beyond reasonable doubt. A different holding would mean that Violeta concocted an elaborate frameup against Sison. We cannot assume that her testimony on the grievous outrage perpetrated against her was a fabrication.

Her version that she was under constant intimidation by Sison withstood the grueling cross-examination to which she was subjected in three hearings. It should not be expected that she would have reacted like an adult or a mature person and thus avoided the clutches of Sison if she did not want to be abducted and raped.

The findings of the medico-legal officer indicate that she was a virgin and support her declaration that Sison had deflowered her.

The penalty of reclusion perpetua was properly imposed for the complex crime of forcible abduction with

ordinary rape.

"Ako po'y inutusan ng aking among lalaki na bumili ng tsinelas sa Quiapo, Maynila, ako'y nag-aabang ng jeep na sasakyan sa Union Civica kanto ng Luzon, Quezon City, ngayon dumating si Ernesto Sison, dala-dala ang isang tricycle.

"Huminto siya sa tapat ko, pilit niyang pinasasakay ako sa tricycle. Nuong hindi ako pumayag ay bumaba siya ng tricycle sabay bunot ng kanyang lanseta o balisong at itinutok sa tiyan ko sabay salya niya sa akin sa loob ng tricycle at sinabing kung hindi ako sasama sa kanya ay papatayin niya ako.

"Dinala niya ako sa Espanya Rotonda. Pagdating namin duon ay iniwan niya ang tricycle at isinakay ako sa isang pampasaherong jeep patungong Balintawak.

"Pagdating namin sa Balintawak ay itinuloy ako sa bahay daw ng kanyang tiyahin, pilit niya akong hinila at dinala sa bahay na iyon. Ipinakilala akong nobya niya sa kanyang tiyahin.

"Pagkatapos nuong hapon na iyon ay umalis kami at dinala ako ulit sa isang bahay na ipinakilala niyang tiya niya sa Novaliches, Quezon City. Ang pagkakilala sa akin ay Maria daw ang pangalan ng kaniyang tiya.

"Nuong gabing iyon ay ibig ko ng umuwi, pero kinuha ni Ernesto ang pitaka kong may laman na pera P12.00, at sabay sinabing 'kung uuwi ka ay papatayin kita', sabay bunot din ng lanseta at itinutok sa akin.

"Matapos kaming maghapunan ay dinala po ako sa isang kuwarto sa bahay na iyon at pilit na pinahiga. Isinara ang pinto ng kuwarto sadya ini-'lock'. Una siyang naghubad, pinahubad din niya ang aking damit, pero hindi ako pumayag.

"Nuong hindi ako pumayag ay sinampal ako ng tatlong beses, ako'y natumba at hinimatay sa sampal kong tinamo. Nuong ako'y nagkamalay ay hubad na ang aking damit at nakapatong na siya sa ibabaw ko, at naramdaman ko na lamang na makiro at masakit ang pag-aari ko at iyong ari ni Ernesto ay naramdaman kong nakapasok na sa aking pag-aari.

"Ang ginawa ko'y lumaban ako at wala akong lakas na kumalas sa mahigpit niyang paghawak sa dalawa kong kamay at pigil sa dalawa kong paa at ulit-ulit binibigkas na papatayin daw niya ako kung hindi ko ipagkakaloob ang nais niya. Matapos ang ilang sandali ay natapos din ang makahayop niyang pagnanasa. Naramdaman kong umaagos ang dugo galing sa aking pag-aari. Nuong matapos siya ay lalabas na sana ako sa loob ng kuwarto pero pinigilan niya ako at hinatak papaloob.

"Makaraan ng ilang sandali ay ginawa niya ulit ang pagkuha sa aking pagkababae, pero ako'y lumaban sa kanya, pero anomang laban ang ginawa ko ay nakamtan niya rin ang ibig niya. Matapos ay natulog na siya. Ako'y umiiyak dahil sa kirot at sakit na naramdaman ko sa aking pag-aari.

"Ito'y nasundan ulit ng maraming beses, kaya nuong Lunes, petsa 16 ng Hulyo, 1973, ay apat na beses niyang nakuha ang aking pagkababae. Nuong Martes, petsa 17 ng Hulyo 1973, ay tatlong beses. Nuong araw ng Miyerko-les, petsa 18 ng Hulyo, 1973, ay tatlong beses din nakuha ni Ernesto ang aking pagkababae.

"Lahat ang ginawa niyang ito ay sa gabi ginagawa sa loob ng kuwartong iyon abot ng aking pagsusumamo na huwag na niya akong gawan ng ganoon, pero hindi rin pinakinggan ang aking daing. Tuwing gagamitin niya ako ay tinatakot akong palagi na papatayin daw niya ako. Sa loob ng araw na nagdaan ay hindi siya umaalis ng bahay at palaging nakabantay sa akin.

"Nuong petsa 19, 20 at 21, 1973 ay hindi niya ako ginalaw dahil niregla na ako. At nuong hapon ng Sabado, petsa

21 ng Hulyo, 1973 ay umalis na kami at dinala ako sa bahay nila sa kalye Valdez St., Sampaloc, Maynila. Ako'y dinala nuong nanay ni Ernesto at tiya daw sa amin at inintriga ako sa nanay ko." (Violeta's statement, Exh. D).

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