

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FLORENCIO "BOY" PALAPAL, DEFENDANT-APPELLANT.**

G.R. No. L-42646. June 29, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Charged with and convicted of rape by the Court of First Instance of Occidental Mindoro, Florencio "Boy" Palapal appeals to this Court the decision of conviction, the dispositive portion of which reads:

"WHEREFORE, the guilt of the accused Florencio "Boy" Palapal, having been established beyond reasonable doubt, he is hereby sentenced to the penalty of Reclusion Perpetua, to indemnify the offended party, Carina Tarega, in the amount of SIX THOUSAND (P6,000.00) PESOS, by way of Moral damages, without subsidiary imprisonment in case of insolvency and to pay the costs. There being no showing up to now that the offended party has become pregnant as a result of the rape, no pronouncement is made as to the support or recognition of the offspring.[1]

Except his denial of having had sexual intercourse with the complainant, Carina Tarega, appellant does not dispute the findings of facts of the trial court based on the State evidence as set forth in the People's brief as follows:

"On May 8, 1975, at about 7:00 o'clock in the evening, the complainant, Carina Tarega, eighteen years of age, single, was in the billiard hall located in the ground floor of their house in the poblacion of Magsaysay, Occidental Mindoro. (Tsn, p. 4, July 17, 1975). From there, the complainant went to the kitchen adjacent to the billiard hall. (Tsn, p. 4, July 17, 1975). While in the kitchen, the complainant was suddenly grabbed by the appellant Florencio "Boy" Palapal, who was known to the complainant and who was readily recognized by her because of the light coming from a gas lamp in the kitchen and from a Coleman lamp in a canteen six meters away. (Tsn, pp. 5-7, July 17, 1975). The appellant got hold of complainant's hands and dragged her about thirty meters passing through complainant's backyard to the adjacent backyard of her grandfather's house. (Tsn, p. 3, July 18, 1975). While she was being dragged away, the complainant struggled hard to free herself and shouted for help from her mother but the appellant overpowered her and succeeded in covering her mouth. (Tsn, pp. 13, 14, July 18, 1975).

"When they reached the backyard of the complainant's grandfather, the appellant pushed the complainant and forced her to lie down. (Tsn, p. 16, July 17, 1975). The complainant continued to resist and struggled hard to wrestle herself away from the appellant. The latter, however, poked a sharp instrument at the side of the complainant. (Tsn, p. 17, July 18, 1975). At this point, feeling pain in her breast and because of her poor physical condition, the complainant lost consciousness. (Tsn, p. 18, July 18, 1975). When she regained consciousness, the complainant discovered that the appellant was gone. She felt pain in her private part and saw her panty pulled down, smeared with blood, its garter destroyed. Her skirt and anus were wet. The complainant stood up and attempted to take a step, but she fell down. (Tsn, p. 18, July 18, 1975). So, the complainant started crawling towards their house and shouted for help from her mother. When complainant came near their house, her mother saw her crying and took her inside. (Tsn, p. 19, July 18, 1975).

The dawn of the following day, the complainant told her mother, "I was raped by Boy Palapal, please take me to a doctor." (Tsn, p. 15, July 21, 1975). That same day, the complainant had herself seen by a physician who, after examining her and finding her hymen newly lacerated, issued a medical certificate marked as Exh. "C". (Tsn, p. 11, 14, July 31, 1975). Right after her physical examination at the clinic the complainant, accompanied by her mother, went to the police and filed the corresponding complaint against the appellant."[2]

In the lone error assigned against the trial court, appellant contends that his guilt has not been established beyond reasonable doubt mainly on his assertion that complainant did not testify on his having had carnal knowledge of her because she was unconscious at the time of the incident.

It is but to be expected that if the sexual assault was committed against the victim while the latter was in a state of unconsciousness, she would not be able to testify on the actual act of sexual intercourse. It is precisely when the sexual intercourse is performed when the victim is unconscious that the act constitutes the statutory offense of rape specially when, as in the instant case, the loss of consciousness was the result of appellant's act of violence. Thus he grabbed the victim's hand, dragged her thirty meters away, the latter all the while resisting and shouting for help. With the complainant's proven rheumatic heart condition for which she was under treatment by Dr. Franco Barrera, the violence dealt on her with the aid of a pointed instrument poked at her side to scare her, Carina easily fell into unconsciousness. It was then that appellant succeeded in satisfying his beastly passion. This is shown by the fact that the girl, upon regaining consciousness, saw her panty lowered down smeared with blood, and the garter destroyed. She also felt pain in her private parts. Her skirt and her anus were wet.

The full significance of all these facts was revealed when, in a physical examination conducted by Dr. Pedro delos Triños of the San Jose Emergency Hospital where Carina and her mother went immediately in the morning following the incident, Carina's hymen was found with fresh lacerations (Exh. C). Need there be testimony of the victim that she was ravished by appellant? In any case, her allegation in her sworn complaint which started the prosecution of this case is as good as her testimony in court on how, with violence, force and intimidation, appellant had carnal knowledge of her against her will.[3]

As to his claim that with the girl's panties lowered down to her knees, the legs could not have been spread apart to allow appellant to insert his organ into the victim's, it need only be pointed out that the garter was destroyed. Or is it not possible that appellant placed back the panties after removing it entirely but up only to the knees? At all events, the fresh laceration noted by the doctor in the victim's hymen renders appellant's theory thoroughly implausible.

With the physical findings as just mentioned, the complainant forthwith went to the police with her mother, to file the corresponding complaint against appellant. From all these actions taken by Carina and her mother, there can be no doubt as to the victim having been sexually assaulted, and by no other villain than appellant against whom the complaint was promptly filed.

Appellant's faint suggestion that if complainant was indeed raped, he could not be the culprit because he did not even see the complainant on the night of the incident, or that the laceration which produced bleeding must have been caused by some hard object other than a male organ simply is preposterous. In the first place, appellant who is well known to Carina was positively identified by the latter as the person who grabbed her hand and dragged her to where the sexual assault was committed. This would render his alibi futile and unavailing.[4] Secondly, it is inconceivable that Carina would allow someone to insert a hard object into her private part even to the extent of causing a laceration, much less that she did the act herself.

The observation of the trial court as to complainant's frail constitution and sickly condition which caused her to faint while on cross-examination adds to the veracity of the victim's testimony of having lost consciousness when

she was rudely handled by appellant and a pointed instrument was poked on her side. It also raises her general credibility as to her entire testimony. With her shyness as the trial court remarkably noted, she could not have invented the story of such a traumatic experience. Only a feeling of deep offense and grievance can overcome her shyness in exposing herself to the torment and humiliation a public trial would visit upon her.[5] No improper motive was suggested much less shown why a false accusation, so grave as the present charge, would be filed against him by complainant.

This Court, therefore, finds no reason at all not to accord full credence to complainant's story of having been ravished by appellant and to reject appellant's bare denial of having raped the complainant. His guilt was thus established beyond reasonable doubt.

WHEREFORE, the judgment appealed from, being in accordance with law and the evidence, the same should be affirmed, modified only as to the amount of indemnity which should be raised from P6,000.00 to P12,000.00,[6] as recommended by the Solicitor General, with costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

[1] pp. 1-2, Appellee's Brief, p. 106, Rollo.

[2] pp. 2-4, Id.

[3] See complaint, p. 6, Rollo.

[4] People vs. Blas, 106 SCRA 305; People vs. Perez, 106 SCRA 436; People vs. Terrobias, 103 SCRA 321; People vs. Tirol, 102 SCRA 558; People vs. Hinlo, 102 SCRA 472; People vs. Lucero, 96 SCRA 694.

[5] People vs. Arias, 102 SCRA 303; People vs. Gargoles, 83 SCRA 282; People vs. Cudalina, 63 SCRA 499; People vs. Baylon, 57 SCRA 115; People vs. Selfaison, 1 SCRA 235.

[6] People vs. Otto, 49 SCRA 306.

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