

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO VIDAL Y BELLO, ET AL., ACCUSED-APPELLANT.

G.R. Nos. L-48876-78. January 30, 1984

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Danilo Vidal y Bello was charged, together with one Rafael Zarragosa y Manrique, with the crime of rape in the Court of First Instance of Camarines Sur, Branch I, Naga City. At the time of the trial, Rafael Zarragosa was still at large, so Danilo Vidal alone stood trial, which was a joint trial, for the three separate informations for rape, based on the complaints of the victim, Maria Socorro Asaytona, alias Salve Vibar. After trial, Danilo Vidal was convicted and sentenced as follows:

"WHEREFORE, in Criminal Case No. 408, the Court finds that accused Danilo Vidal, guilty beyond reasonable doubt of the crime of rape as alleged in the Information for having ravished or raped Maria-Socorro Asaytona alias Salve Vibar on the night of May 22, 1977 with assistance of his co-accused Rafael Zarragosa (who is at large), against her will with the attendance of aggravating circumstance of: use of motor vehicle and night time, and hereby sentences him to suffer the penalty of reclusion perpetua (life) and to pay the damages in the sum of P10,000.00 to the offended party without subsidiary imprisonment in case of insolvency and to pay the costs.

"In Criminal Case No. 409, likewise the Court finds the accused Danilo Vidal, guilty beyond reasonable doubt of the crime of rape as alleged in the Information for having ravished or raped Maria-Socorro Asaytona alias Salve Vibar on the night of May 22, 1977 with the assistance of his co-accused Rafael Zarragosa (who is at large) against her will with the attendance of two (2) aggravating circumstance of: use of motor vehicle and nighttime, and hereby sentences him to suffer the penalty of reclusion perpetua (life) and to pay the damages in the sum of P10,000.00 to the same offended party, without subsidiary imprisonment in case of insolvency and to pay the costs.

"Lastly, in Criminal Case No. 410, the Court finds the accused Danilo Vidal, guilty beyond reasonable doubt of the crime of rape as alleged in the Information for having ravished or raped the same offended party, Maria-Socorro Asaytona alias Salve Vibar on the night of May 22, 1977 with the assistance of his co-accused Rafael Zarragosa (who is at large), against her will with the attendance of two (2) aggravating circumstances of use of motor vehicle and nighttime, hereby sentences him to suffer the penalty of reclusion perpetua (life) and to pay the damages in the sum of P10,000.00 to the offended party, without subsidiary imprisonment in case of insolvency and to pay the costs.

"Considering the nature of the penalty, the same shall be served at the same time."[1]

This appeal was interposed by Danilo Vidal.

From the People's Brief, We quote the facts as established by the prosecution:

"On June 3, 1977, complainant Maria Socorro Asaytona, also known as Salve Vibar, filed three (3) criminal complaints with the Naga City Fiscal's office against appellant Danilo Vidal y Bello and Rafael Zarragosa y Manrique for raping her in the evening of May 22, 1977 within the territorial jurisdiction of Naga City. Said complaints which were subscribed and sworn to before First Assistant City Fiscal Vicente A. Estela were reproduced in the three (3) Criminal Informations filed with the court by aforementioned public prosecutor and docketed as Criminal Cases Nos. 408, 409 and 410, respectively, the recitals of which Informations being as follows: "On or about May 22, 1977 in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, conspiring, confederating together and mutually helping each other, did, then and there willfully, unlawfully and feloniously have carnal knowledge with the herein complainant MA. SOCORRO ASAYTONA Y EBRON alias SALVE VIVAR Y EBRON, a minor, 14 years of age, by means of force and intimidation, against the latter's will and consent, in the following manner: Accused DANILO VIDAL Y BELLO held complainant to prevent her from resisting, while the accused RAFAEL ZARRAGOSA Y MANRIQUE had sexual intercourse with said complainant for the second time.

CONTRARY TO LAW." (Criminal Case No. 408)

"On or about May 22, 1977, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, conspiring, confederating together and mutually helping each other, did, then and there wilfully, unlawfully and feloniously have carnal knowledge with the herein complainant MA. SOCORRO ASAYTONA Y EBRON alias SALVE VIVAR Y EBRON, a minor, 14 years of age, by means of force and intimidation, against the latter's will and consent, in the following manner Accused RAFAEL' ZARRAGOSA Y MANRIQUE held complainant to prevent her from resisting while accused DANILO VIDAL Y BELLO had sexual intercourse with the said complainant.

CONTRARY TO LAW." (Criminal Case No. 409)

"On or about May 22, 1977, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above named accused, with lewd design, conspiring, confederating together and mutually helping each other, did, then and there willfully, unlawfully and feloniously have carnal knowledge with the herein complainant MA. SOCORRO ASAYTONA Y EBRON alias SALVE VIVAR Y EBRON, a minor, 14 years of age, by means of force and intimidation, against the latter's will and consent, in the following manner: Accused DANILO VIDAL Y BELLO held complainant to prevent her from resisting, while the accused RAFAEL ZARRAGOSA Y MANRIQUE had sexual intercourse with said complainant after boxing her stomach.

CONTRARY TO LAW." (Criminal Case No. 410)

"Upon arraignment, appellant entered a plea of not guilty. Hence, trial on the merits ensued.

"The evidence for the prosecution showed that in the afternoon of May 22, 1977, a Sunday, com-plaining witness heard mass at the Naga Cathedral church. At about 6:00 p.m., after attending mass and while she was on her way home, a trimobile with sidecar No. 683 driven by appellant whom she had known for sometime before, with a companion was later identified as Rafael Zarragosa y Manrique stopped in front of her and invited her to board the vehicle (pp. 4-5, t.s.n., October 6, 1977).

"Complainant was told by appellant that they will take a ride with his friend, Rafael. They went to Jimenez Park and upon reaching the same, appellant told complainant to drive the vehicle and proceed to Palestina, in Pili because appellant will get something from his cousin there (pp. 6, 45, t.s.n., October 6, 1977).

"Upon reaching Palestina, appellant proceeded to his alleged cousin's place and together with his co-accused Rafael Zarragosa and two (2) others, they had a drinking spree consisting of two (2) bottles of gin (pp. 7-8, t.s.n., October 6, 1977).

"After drinking, they proceeded to go home to Naga City, with appellant at the wheel. Upon reaching Jimenez Park for the second time at about 7:45 in the evening, appellant swerved the vehicle to said park stopped the

same, held complainant's arms behind her neck and told Zarragosa to undress her. She struggled hard to get away from them. After she was undressed, Zarragosa placed himself on top of her and she shouted for help but while doing so one of them told her if she continued shouting one of them stab her. Still complainant continued shouting and Zarragosa boxed her stomach, causing her great pain and she felt very weak (pp. 8-13, t.s.n., October 6, 1977).

"Zarragosa then concentrated on, and held, her private parts laid on top of her body inside the vehicle and forcibly had sexual intercourse with her. She cried of the great pain she felt in her vagina and before Zarragosa's private part was pulled out, she felt that something had emitted from it while inside her private part (pp. 13-17, t.s.n., October 6, 1977).

"After Zarragosa was through having carnal knowledge with complainant, the former again drove the trimobile and proceeded to the Diversion road, while all the while appellant was embracing and kissing complainant. When they reached the middle of the Diversion road, Zarragosa parked the vehicle at the dark side of the road, forcibly undressed complainant once again while appellant was holding her hands behind her. When she was already undressed, appellant forced himself on complainant and had sexual intercourse with her, Zarragosa holding her legs apart while appellant was on top of her (pp. 19-25, t.s.n., October 6, 1977).

"After appellant was through with his heinous deed, Zarragosa again forced complainant to have liaison with him for the second time while appellant held her arms behind her. When Zarragosa was through with his second rape on complainant, they drove home to the house of her grandmother at Blumentritt St., Naga City, where she preferred to go, instead of going to the house of her employer where she worked as a maid, so that she can report the violation of her chastity immediately (pp. 25-28 t.s.n., October 6, 1977).

"Upon being apprised of the dastardly deeds committed on her by her assailants, complainant's grandmother took her immediately to the police station where they reported the incident, after which they proceeded to the provincial hospital for treatment and examination. From the provincial hospital, complainant went home to the house of her employer, Miss Tangcalao, at Dimasalang St., Naga City.

"The next morning, complainant went back to the police station where she saw and identified the two (2) accused (pp. 28-29, t.s.n., October 6, 1977).

"As mute evidence of the fact that complainant was really ravished by the accused, one of them appellant herein, the prosecution presented the following exhibits and the same were admitted by the court: Exhibit A - the maong pants worn by the victim on the date of the incident; Exhibit A-1 - the blood stain located exactly at the center in between the two legs of the pants; Exhibit B - the pair of panties worn by the victim; Exhibit B-1 - the blood stain found between the middle of the legs directly on the female organ of the victim; Exhibit C - the maroon blouse or T-shirt worn by the offended party at the time she was criminally abused; Exhibits D, E and F - the criminal complaints duly signed and filed by the complainant in Criminal Cases Nos. 408, 409 and 410; Exhibit G - the medical certificate issued by the medico-legal after examining the body and sexual organ of the victim; Exhibit G-1 - the signature of the medico-legal or doctor who conducted the medical examination of the offended party. Aforeenumerated exhibits were presented as part of the testimony of complaining witness to corroborate the same and show that on the date alleged in the complaints and informations she was in fact abused by appellant and the latter's co-accused (pp. 11-12, t.s.n., December 1, 1977).[2]

Appellants raises in this appeal sole question of credibility, claiming his version of the incident to be worth greater belief. We quote from appellant's brief his version as follows:

"According to the version of the accused Danilo Vidal he came to know the complaining witness Salve Vibar because she was introduced to her by his friend accused Rafael Zarragosa being his girlfriend four months before the alleged incident. That several Sundays and Saturdays after their introduction, his trimobile was hired

by Rafael Zarragosa in order to teach complaining witness Salve Vibar to drive the trimobile. That on several occasions they had practiced driving at the Gimenez Park Subdivision and at the Villa Concepcion Subdivision. That on the Sunday previous to May 22, 1977 they agreed to have another driving practice and their meeting place was near the Metropolitan Cathedral after the afternoon mass. At 6:00 o'clock p.m. on May 22, 1977, they proceeded to Gimenez Park Subdivision where they made several rounds. Then they proceeded to Palestina at the instance of accused Danilo Vidal in order to see his cousin. That in going to Palestina Salve Vibar was driving the trimobile. That in Palestina after Danilo Vidal talked to his cousin, Rafael Zarragosa offered a blow out to Salve for her successfully driving the trimobile on the highways. Rafael bought one bottle of gin and coca-cola for Salve. That five persons drank the bottle of gin, the two accused, the cousins of Danilo, and two companions in the volleyball session when accused Danilo did not know. That during the drinking spree Rafael offered complaining witness a glass of gin but Salve would not drink. However, when Salve was not looking he poured a portion of the gin into her glass of coca-cola which she drank. That after they finished the bottle of gin the accused and the complaining witness tried to drive the trimobile but accused Danilo Vidal would not give the motor because it was dark the time being around 8:00 o'clock p.m. and besides Salve Vibar was a little bit tipsy. So, in going to Naga Salve rode on the side car with accused Rafael Zarragosa. That while Danilo was driving the trimobile to Naga City he was advised by Rafael to drive slowly. That as soon as Danilo slowed down, the accelerator he saw Rafael and Salve romancing inside the side car. That upon approaching Concepcion cemetery accused Rafael ordered Danilo to stop. As soon as the trimobile stopped Rafael alighted and dragged Salve towards the cemetery. Rafael then was already angry, so Salve followed Rafael to the dark corner of the cemetery without further resistance. That they stayed there for about one hour. When they returned to the trimobile Salve was crying and lambasted accused Danilo Vidal for being a traitor. When Danilo Vidal started the motor to go home, Salve informed Rafael and Danilo that she would not go home unless Rafael married her. While they were discussing, people from the store at the opposite side of the road approached them. So Danilo started the motor and proceeded to the diversion road. When they reached the Naga City Sports Arena, Danilo stopped the trimobile. Rafael continued convincing Salve to go home as he would marry her later on. It took Rafael around thirty minutes to convince her but with the agreement that she should be brought to her grandparent at Blumentritt St., not to Dimasalang St., where she lived because her landlord would be angry at her for going home late.[3]

What appears to be worth considering in appellant's claim of incredibility on the part of complainant's version is whether it was physically possible to perform the carnal act inside the trimobile. The trial Judge who must be familiar with the side car of a trimobile dismissed the claim as unsustainable. In his decision, it is described as big and spacious enough, and with the legs of the girl held down and spread apart as was done, the male can go on top of her and perform the act, the girl being made to recline backward, as the complainant was made to do, according to her.

The boxing of the stomach is next assailed by appellant as not true for according to the medical examiner, there was no external injury on her body. The medico legal examiner himself explained that if there was no contusion that is no proof that there was no pressure applied on the stomach. It will depend on the resistance of the body tissues. (pp. 6-10 t.s.n., November 29, 1977).

Likewise, appellant tries to discredit complainant's testimony by asserting that the complainant did not shout while being raped in Jimenez Park, for the nearby houses to have heard the shout and came to her rescue. But as narrated by complainant, she actually shouted, but her outcries would have availed her nothing for there were no houses at the place pointed, as she declared (pp. 51-52, t.s.n., October 6, 1977). Furthermore, appellant covered her mouth every time she did cry out. This is also what appellant did when complainant raised outcries when approaching a police outpost on the right side of the highway. Not only did complainant try to shout, but she also thought of jumping out from the vehicle, but desisted because they were going so fast, aside from appellant also blocking her way, thus making it impossible to break away from the clutch of her tormentors.

Was it natural for Zarragosa who is the boyfriend of complainant to offer her for appellant's carnal satisfaction? This is one improbability in complainant's testimony appellant claims to discredit said testimony. Complainant, however, denied the allegation that Zarragosa was courting her or was her boyfriend as per fabrication on the part of appellant. The fact is Zarragosa was introduced to her while on their way to Palestina, Pili, Camarines Sur (pp. 43-44 t.s.n., October 6, 1977).

The testimony of complainant, as the trial court found, therefore, stood firm in all its naturalness and candor, considering that it was given by a mere 14-year old country girl. Her motive in complaining to the authorities is to obtain justice for the wrong committed against her, as none other was given, which she would not have done if the true story is how the appellant narrated it. It has been often observed that:

"It is unthinkable that an unmarried teenager, a high school student, would endure the shame and humiliation of being publicly known that she had been ravished, allow an examination of her private parts and undergo the trouble and expense of a court proceeding if her motive was not to bring to justice the person who had grievously wronged her." (People vs. Canastre, 82 Phil. 480; People vs. Savellano, L-31227, May 31, 1974; People vs. Danilo Garcineas, 57 SCRA 661).[4]

She would not have included appellant in the charge, specially as he is a married man, the reason too, why he did not flee, as his co-accused did because he is single, a fact exploited upon by appellant to show his innocence for not fleeing while Zarragosa had gone at large. If her purpose is only for appellant to be equally punished without having to have sexual intercourse with her, complainant should just have pictured appellant as having cooperated with acts for Zarragosa alone to do the sexual act, and he would then be punished as co-principal.

Indeed, there is nothing unnatural for appellant to have also performed the second intercourse after Zarragosa, not because Zarragosa offered the pleasure, but because he wanted to satisfy his lust then uncontrollable after seeing Zarragosa and complainant in the unconsented act of sexual intercourse, availing also of Zarragosa's cooperation. He even had the longer time than Zarragosa, who being single, was not satisfied with just one intercourse, although for shorter time in each act.

Wherefore, the trial court committed no error in convicting appellant, except for convicting appellant as co-principal by cooperation, in the two times his co-accused performed the sex act, and by direct participation when he did the same act himself, not as principal by direct participation in all three times of separate sexual intercourses, committed upon the helpless victim. The penalty should therefore, be raised to the supreme penalty because of the presence of the two aggravating circumstances, found by the trial court, without any mitigating circumstances to offset the same. However, for lack of necessary votes, the penalty to be imposed should be only life imprisonment. Accordingly, the judgment appealed from, modified as just indicated, should be affirmed in all other respects, with costs. SO ORDERED.

Concepcion, Jr., Guerrero, and Abad Santos, JJ., concur.
Escolin, J., in the result.

Aquino, J., The Solicitor General recommends the imposition of three death penalties (People vs. Villa, 81 Phil. 193; People vs. Toledo, 83 Phil. 777). Ordinarily, this case should be decided by the Banc.

As the accused is sentenced to three reclusion perpetuas, he should serve the same successively subject to the forty-year limit (Penultimate par., Art. 70, Revised Penal Code).

The trial Court's statement in the dispositive part of its decision, that the three penalties should "be served at the same time" considering the nature thereof, is not correct.

Makasiar, J., (Chairman) joins J. Aquino in his concurrence.

[1] pp. 2-3, Appellee's Brief.

[2] pp. 4-10, Ibid.

[3] pp. 72-73, Appellant's Brief.

[4] pp. 15-16, Appellee's Brief.

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