

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SEBASTIAN JERVOSO, ACCUSED-APPELLANT.

G.R. No. L-36530. September 29, 1983

Ponente: ESCOLIN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ca329e1f62fa/>

ESCOLIN, J.:

Appeal from the judgment of the Court of First Instance of Leyte, finding appellant Sebastian Jervoso guilty of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, to pay the offended party Amelita Austero the sum of P2,000.00 as moral damages, and to pay the costs.

Contending that the lone and uncorroborated testimony of the complainant falls short of the quantum of proof necessary to overcome the constitutional presumption of innocence, appellant seeks to set aside said judgment of conviction.

The version of complainant Amelita Austero, a maiden of 20 years, is that appellant, a policeman of Abuyog, Leyte, was her neighbor at Real Street in the poblacion of Abuyog. In the evening of April 4, 1968, she was alone in their house, preparing supper. Her father Quirino Austero had not yet returned from the Abuyog Emergency Hospital where he was employed, while her mother was visiting a neighbor who lived across the street from their house. At 7:00 o'clock that night, Amelita went down to fetch water from the well of a neighbor, Cresencia Aller. On her way thereto, she saw the appellant in a police uniform standing near the door of his house. Appellant approached her and immediately grabbed her left hand. At the same time he drew his gun and, pointing it at her, warned her not to shout. He then dragged her on the ground to the toilet of his house about 12 meters away. Inside the toilet, appellant slapped her twice on the face and ordered her to remove her panty. When she refused, he raised her dress and forcibly pulled down her panty which was torn in the process. At that juncture, he returned his gun into the holster. He inserted his right middle finger into her sexual organ and lifted it, causing her intense pain. Holding her right shoulder, he tripped her with his right foot and pushed her violently to the floor. While she was in a sitting position, he placed his legs over her right foot and removed her panty. After unzipping his pants, he released his right middle finger from her vagina, then spread her legs apart and inserted his penis into her sexual organ. According to Amelita, while the appellant was doing the push and pull movement, "I tried to struggle, but could not free myself because he was on top of me." [1] She further declared that all the while that she was being abused, she did not shout for help. [2]

After satisfying his lust, appellant again pulled out his gun from the holster and warned her not to tell her parents about the incident, otherwise he would kill her. Such threat notwithstanding, she informed her mother immediately after the latter's arrival in the house. The following day, April 5, 1968, Amelita went with her mother to Tacloban City to attend the graduation of her sister Aurora. They returned to Abuyog on April 8.

On April 9, 1968, complainant and her mother reported the incident to Mayor Traya of Abuyog. The latter, however, told them that since the crime was a serious one, they should file their complaint with the authorities in Tacloban City. Thus, fifteen (15) days after the incident, or on April 19, 1968, complainant, accompanied by her

mother, proceeded to Tacloban City where she filed a complaint with Assistant Provincial Fiscal Matol.

On April 22, 1968, complainant submitted herself to a physical examination by Dra. Pastora Redoña, resident physician of the Leyte Provincial Hospital in Tacloban City. The doctor's findings are as follows:

"Pubic hair - moderate in amount, black in color.

Hymen - only remnants and serrated.

Vaginal orifice - admits 2 fingers (3 cm.) smoothly.

Vaginal floor - with thick milky material resembling condensed milk.

Vaginal smear - negative for sperm cells."

Under cross-examination, Amelita was confronted with the following testimony she had given during the preliminary investigation conducted on May 20, 1968 before First Asst. Fiscal Zoila N. Redoña, to wit:

Atty. Benedicto [to witness]:

Q : You allowed him to have sexual intercourse with you for fifteen minutes?

A : Yes, sir.

Q : And you reached the climax together with him, is that correct?

A : Yes, sir.

Q : After that he continued pushing out and inside his penis, is that correct?

A : No, sir.

Q: How long did you come to a climax - after he inserted his penis inside your vagina?

A : After fifteen minutes.

Q : After you reached the climax, he continued pulling in and out his organ, is that correct?

A : (answered already)

Q : After you reached the climax together with Jervoso in that sexual intercourse, he continued having sexual intercourse with you, is that correct?

A : No more.

Complainant did not deny that she reached a climax during her sexual intercourse with appellant.

We find the appeal impressed with merit.

It is a well-established rule that, where the charge of rape is based solely upon the testimony of the complainant, the Court must exercise the greatest degree of care and caution in scrutinizing such testimony, and the person charged with the offense should not be convicted unless the complainant's sincerity and candor are free from suspicion.[3]

A meticulous review of the records reveals certain significant circumstances which render complainant's charge of force and intimidation highly dubious and improbable.

[1] Complainant's allegation that she was dragged on the ground over a distance of 12 meters, that she was slapped and then pushed down to the toilet's floor with great force is belied by the medical findings. Dr. Redoña,

who conducted a physical examination of complainant, failed to find any abrasion, laceration or contusion on her body. The absence of such physical evidence casts serious doubts on the charge of force and intimidation; for "physical evidence is proof of the highest order and speaks more eloquently than all the witnesses put together".[4]

[2] According to complainant, she struggled and resisted the appellant's advances. There is, however, nothing in her entire testimony to describe the manner by which she struggled and resisted. Her supposed resistance, alleged in general terms, is a mere conclusion which cannot suffice to sustain a judgment of conviction.[5]

[3] It is undisputed that during the entire incident, even after appellant had returned his gun to its holster, complainant did not shout for help or make any outcry, although there were several houses close to the scene of the crime. Neither did she make any serious attempt to prevent appellant from insert-ing his organ into her vagina. This posture passivity on her part does not square with experience and human nature.

In the crime of rape, alleged to have been com-mitted by force, it is essential that the element of voluntariness on the part of the victim be absolutely lacking. Where there is an indication that the offended party contributed in some way in the consummation of the sexual intercourse or had shown any willingness, even if half-hearted, the complaint must be dismissed.[6]

[4] On the following day, Amelita, apparently unperturbed by her harrowing experience of the previous day, accompanied her mother to Tacloban City to attend the graduation of her sister. They returned to Abuyog on April 8. But during their four-day sojourn in Tacloban City they did not report the crime to the fiscal's office. It was only on April 19, or 15 days after the incident, that complainant returned to Tacloban to file her complaint before Asst. Provincial Fiscal Matol. Such unexplained delay in denouncing the appellant seriously impairs her sincerity and credibility.

[5] Finally, by complainant's own admission, she reached a climax while she was being raped. This circumstance disproves the charge of force and coercion, for it is well-nigh impossible for any woman to expe-rience orgasm while being assaulted by a rapist.

Withal, the facts proven at the trial failed to demonstrate to a moral certainty that appellant employed force and intimidation.

ACCORDINGLY, the judgment of conviction is hereby set aside, and appellant Sebastian Jervoso acquitted of the crime charged. Cost de oficio.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Relova, and Gutierrez, Jr., JJ., concur.

Aquino, J., see dissent.

Guerrero, J., joins J. Aquino in his dissenting opinion.

Abad Santos, J., on leave.

De Castro, J., on sick leave.

[1] TSN, May 18, 1970, p. 38.

[2] TSN, May 18, 1970, p. 33.

[3] People vs. Lacuna, 87 SCRA 372; People vs. Fausto, 51 Phil. 852.

[4] People vs. Berdaje, 99 SCRA 388.

[5] People vs. Lacuna, 87 SCRA 372.

[6] People vs. Joven, 64 SCRA 126; People vs. de Dios, 8 Phil. 279.

People vs Jervoso : L-36530 : September 29, 1983 : J. Aquino : Second Division : Dissenting Opinion 6 pt 6 pt 0
3 MicrosoftInternetExplorer4 /* 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.:

With all due deference to the ponente's opinion, I dissent. I agree with Judge Jesus N. Borromeo's assessment that at about seven o'clock in the evening of April 4, 1968 Patrolman Sebastian Jervoso raped in his toilet his neighbor, 21-year old Amelita Austero, whose house was only two meters away from his house where she lived with his family in 1967.

While Amelita was no longer a virgin at the time of the rape, this fact would not exclude the forcible sexual congress forced upon her by Jervoso. The following findings of Judge Borromeo are well taken:

"Analyzing carefully the testimony of complain-ant Amelita Austero, the Court is of the opinion that accused succeeded in having carnal knowledge of her through force and intimidation for, among other things, she declared that after accused forced her to get inside the toilet at a point of a gun, he slapped her twice on the face so that she felt dizzy.

"Then accused raised her dress, pulled out her pantie, placed his finger inside her private part, tripped her feet with his right foot, pushed her to the floor and even if she struggled to free herself, he overpowered her so that he finally was able to insert his penis inside her vagina.

"The Court gathers from Amelita's testimony that all these things were effected by accused in spite of her resistance which was of no use considering that he had a firearm with him and he threat-ened her life. As a matter of fact, the Court believes that, even without a weapon, accused could have overpowered Amelita to satisfy his car-nal desires considering that, in the estimate of the Court accused is five feet and six and one-half inches (5' 6-1/2") tall and about 180 pounds in weight while Amelita is only four feet, eight inches (4' 8") tall and only about 90 pounds in weight.

"Aside from the fact that accused has failed to introduce any evidence indicating voluntariness on the part of Amelita, the Court thinks that there is every reason to believe that Amelita could not have voluntarily submitted herself to the sexual desires of accused for there is no reason why she should have done so taking into account at he was older than her by twenty years and she very well knew that he was married since she had lived for a time in his house as a helper.

"It may be true that, as may be gathered from Doctor Redoña's testimony Amelita could have had sexual intercourse with a man before April 4, 1968 but this cannot in any manner minimize the fact that accused forcibly attained his sexual desires on Amelita as it may be that she could have been attracted to a younger and single man to the extent that she could have voluntarily submitted herself to his desires, but this does, not mean that she also voluntarily submitted herself to accused simply because she had a previous experience:

"Incidentally, the Court thinks that Amelita's credibility regarding her having been raped should not be affected by her apparent falsehood in stating that she was still virgin prior to April 4, 1968 for it is understandable that a young woman like her will try to protect her reputation as much as possible.

x x x x x x x x

"Of course, the fact that Amelita Austero could have had earlier sexual relation with a man should not in any manner diminish the criminal res-ponsibility of accused in this case, for, according to the Supreme Court, the character of an offended woman in the offense of rape is immaterial. (See *People vs. Blance*, 45 Phil. 113).

"It, therefore, results that, finding as credence Amelita Austero's testimony that accused succeeded in having carnal knowledge of her through force and intimidation on April 4, 1968, the Court has no other alternative but to conclude that accused is criminally liable for the offense of rape charged in this case.

"The fact that complainant Amelita Austero brought her case to the attention of the office of the Provincial Fiscal only on April 22, 1968 does not, in the view of the Court, weaken the case against accused because it is understandable that she could not expect much help or favorable action if she lodged her complaint with the police force of Abuyog considering that accused was himself a policeman.

"It may be even noticed that, according to Amelita and Conchita Austero, Mayor Traya himself advised them to pursue the case outside of Abuyog because the offense involved was a serious one. Of course, the mayor himself found it rather difficult if the case were initiated in Abuyog because accused was a policeman whom he himself had appointed, aside from the fact that he was a relative of his wife."

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.