

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO MENDOZA, ALIAS RODEL, DEFENDANT-APPELLANT.

G.R. No. L-45679. September 30, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the decision of the Court of First Instance of Leyte, finding the accused Rodolfo Mendoza guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of RECLUSION PERPETUA and to pay the offended party Lolita Domingo the amount of Two Thousand Pesos (P2 ,000.00) as moral damages.

Prosecution evidence shows that in the early morning of April 20, 1974, while complainant Lolita Domingo was alone in a room of her house in the poblacion of Tolosa, Leyte, nursing her six-month-old baby, she was awakened by the appellant whom she had known for the last three years. She was alone at the time as her husband, Alvin Domingo, was in his office at the Leyte Electric Cooperative Inc. (LECI) in Barrio San Roque, about eight (8) kilometers away from the poblacion of Tolosa, and her three-year-old daughter was with her mother-in-law. Upon seeing appellant standing near the mosquito net of her bed, she was about to get up when he went on top of her and pointed a sharp instrument (home-made ice pick, Exhibit D) at the left side of her body. Appellant then ordered her to remove her slacks (Exhibit B) which she did; ordered her to remove her panties (Exhibit C) and when she would not follow appellant pulled a blanket and covered complainant's face with it. Thereafter, he forcibly pulled her panties down to her thighs, took a pillow and put it on her face while his right hand holding a home-made ice pick was pointing it to the left side of her body. Appellant then inserted his penis into complainant's vagina. She tried to resist by closing her legs but he succeeded in spreading her legs and in his sexual assault on her. After about three minutes the appellant rose and ran away by jumping through the window. Before the accused could jump complainant chased him, switched on the light and shouted for help.

Patrolman Ibañez, together with her neighbors came and asked her what happened. She told the peace officer that appellant had raped her. Later in the morning of the same date, complainant went to the Chief of Police to present the ice pick that appellant pointed to her side.

On April 23, 1974, complainant was examined by Dr. Vicente B. Makabenta, Municipal Health Officer of Tolosa, Leyte and his report (Exhibit A) reads as follows:

""MEDICAL CERTIFICATE

Name: PLACER-DOMINGO, LOLITA Age: 32

Address: Public Market, Tolosa, Poblacion, Leyte

Sex: Female

Occupation: Housekeeper Status: Married

Alleged Case: Robbery with Rape

Date: Time and Place of Examination:

April 23, 1974 at 3:00 P.M. at the

Rural Health Unit Clinic, Tolosa, Leyte

Requesting Officer: Margarito Cavite,

Chief of Police, Tolosa, Leyte

Findings:

External: Stenic, fairly nourished and developed, fair, married, female, Filipino.

Breast: fully developed, symmetrical, hemispherical in shape, soft in consistency, engorged with milk (lactating). Ariola pinkish with prominent protruding nipples.

Internal: Pubic Hair - Abundant and well distributed.

Labia Mejora - Rounded soft.

Fourchette - Rounded in appearance with retracted edge but showing a circumscribed erythematous spot, peesized in the anterior aspect, of recent origin.

Hymen Canal - Ruptured with healed laceration.

Vaginal Canal - Slightly lax, permits two fingers of examiner's hand with slight resistance, no discharge appreciated.

Conclusion: Patient had been cohabited recently."

The accused denied having raped Lolita Domingo on the early morning of April 20, 1974 in Tolosa, Leyte, explaining that he could not have possibly done so as between 11:00 in the morning of April 19, 1974 until 1:00 in the afternoon of April 21, 1974, he was in the house of his father's tenant, Matias Velarde, in his father's farm in Barrio Langit, Alang-Alang, Leyte about seven (7) kilometers away. He was sick at the time as he was wet by the rain and he was shivering.

Further, appellant and his father Agapito Mendoza claimed that he had been falsely charged in the case because of an inheritance dispute between his father and his father's children by his first wife, Emperatriz Lauzon, and Eleodoro Lauzon, step-father of Lolita's husband.

Coming to this Court, appellant claimed that the trial court erred (1) in believing and basing its judgment of conviction of accused-appellant on the sole, uncorroborated, fantastic, unbelievable and incredible testimony, on the alleged rape of the complainant; (2) in discounting the facts and circumstances on the records consistent with the innocence of the accused-appellant; and (3) in not believing the defense of alibi of accused-appellant and in not acquitting accused-appellant.

From the evidence presented by both parties, the guilt or innocence of the appellant depends entirely upon the veracity of the testimony of complainant Lolita Domingo. Appellant contends that complainant while lying in bed beside her six-month-old baby did not make any outcry nor employ effective resistance. Considering the fact that complainant and her baby were threatened by appellant who pointed a home-made ice pick at them, it is understandable why she could not make any outcry or offer effective resistance to the aggression of appellant. Neither is it incredible that Lolita was able to remove her slacks while appellant was on top of her because it was

he who ordered her to remove it under threat. Moreover, at that time the hook of her slacks were already unlocked before complainant went to sleep.

Relative to the claim of appellant that the matter was belatedly entered in the police blotter, the same was sufficiently explained by defense witness, Pat. Napoleon Advincula, who testified that he put in writing what Lolita had related to him regarding the rape on her person. When this was not entered by Pat. Teofilo Clemencio, Pat. Advincula called his attention thereto, and, thereafter, Pat. Clemencio added the statement "and she was raped" in the blotter.

The trial court committed no error in rejecting the defense of alibi set up by the appellant. In the case at bar, he was positively identified by his victim who had known him for about three years before the incident. Besides, the defense of alibi was not supported by positive, clear and satisfactory evidence. Appellant failed to show that it was impossible for him to be present at the scene of the crime considering that Barrio Langit, Alang-Alang where he was allegedly at the time was only about seven (7) kilometers away. Further, the defense of alibi depends on the credibility of witnesses and in this respect, the relative weight which the trial judge gave to the testimony of witnesses must, unless patently and clearly inconsistent with the evidence on record, be accepted. (People vs. Berdida, 17 SCRA 520).

Then Acting Solicitor General Vicente B. Mendoza, in his brief for the People, gave the following observation:

"However, we note that the trial court committed an error when it refused to impose the maximum penalty of death in spite of its finding that the aggravating circumstance of nighttime and that the crime was committed in the dwelling of the offended party were duly established by the pro-secution. The refusal of the trial court to consider the aforesaid aggravating circumstances stems from its erroneous belief that these aggravating circumstances not having been alleged in the information the same cannot be considered in imposing the penalty. We respectfully submit that only qualifying circumstances must be alleged in order to be considered as such. Aggravating circumstances even though not alleged in the information but proved during the trial may be considered in the imposition of the penalty (People v. Bautista, 28 SCRA 184 [1969]). Hence, there being two aggravating circumstances, and no mitigating circumstance and the crime charged is a qualified rape because of the allegation in the information which was proved during the trial that the accused made use of an ice pick which is a deadly weapon, the penalty that should be imposed should be death. The indemnity for the crime of rape has been raised to P12 ,000.00 (People v. Abay, 70 SCRA 521 [1976])."

The observation of the Acting Solicitor General is tenable but for lack of the necessary votes, the extreme penalty of death cannot be imposed.

WHEREFORE, the appealed judgment is hereby AFFIRMED with the modification that the indemnity should be raised to P12 ,000.00. With costs against the appellant.

SO ORDERED.

Barrredo, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., dissents the stage of moral certainty not having been reached.

Teehankee, J., no part.

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