

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LORETO MALBAGO, ACCUSED-APPELLANT.*G.R. No. L-37679. May 14, 1990*

Ponente: NARVASA, J.

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Loreto Malbago appealed to this Court from the judgment of the Court of First Instance at Ormoc City, which convicted him of the felony of rape and sentenced him to "life imprisonment; to indemnify the victim Florita Turtogo in the sum of P12,000.00; and to recognize the offspring, if and when the complainant shall give birth to a child within the ordinary period of pregnancy from the date of the sexual intercourse on February 20, 1973." [1]

At the time that the crime was supposedly committed, Florita was 14 years of age, residing at barrio Rizal, Kananga; Leyte, and a high school student at the Saint Peters college at Ormoc City. Loreto was then the driver of a "St. Anthony" passenger bus, whom Florita had known for quite some time, having first become acquainted with him when he was employed as the driver of a neighbor's jeep; [2] he was described by Florita in her testimony as a close friend of hers; [3] and she was wont to address him as "Noy Rito," "noy" being a contraction of "manoy," a term of respect for an older man. [4]

Florita's narration of her rape is set out in no little detail in the decision of the Trial Court.

She says that on February 18, 1973, she went to Kananga to do some marketing and also to get a bag she had left at the municipal building where a "coronation ceremony," which she had attended, had been held the night before. She met "Noy Rito," Loreto Malbago, at the bus station, and rode in the "St. Anthony" bus driven by him on the trip back to her home at Barrio Rizal. On the way, she told Loreto of a scolding she had received from her sister after they had both gone home from the coronation ceremony. Loreto then "invited her to go with him to Palompon, Leyte to stay with a certain lady teacher there, and she acceded **." [5]

Two days later, on February 20, 1973, Florita again met Loreto at the bus station. She told him she meant to go to Tacloban City, "but he told her that he would conduct her to Palompon, Leyte ** ; (the bus developed engine trouble however) in the bus station of Kananga ** (so) Loreto Malbago said they would just go back to Ormoc; (they did) and the accused brought her to the house of Mr. Teodoro Bonsilao in Mabini St., Ormoc City at about six or seven o'clock in the evening of that day **." [6]

Florita was acquainted with Teodoro Bonsilao, who was called "Lolo," and whom she knew to be a former driver also of a "St. Anthony" bus. At Teodoro's house, she met his wife, Paz, for the first time. She "noticed that there were many teen-agers and children, mostly boys, who were there as well as the couple ** (and) that the house of the Bonsilaos is not big ** and has only two rooms **." She was told by Paz that "some of those children ** are her children and some were her nephews and nieces **."

Florita washed her feet and then dried them with a towel in the bedroom to which she was brought by Teodoro Bonsilao's 12-year old daughter, Inday. Florita sat down on the bed. Inday went out. Loreto came in. He sat beside

her and without saying anything held her right hand. Florita, alarmed, went out of the room and conversed with Inday Bonsilao in the sala. After a while, feeling sleepy, she asked Inday to accompany her back to the bedroom where they continued to talk. A little later, Inday's mother, Paz, came in. Paz asked Florita why she was with Loreto.[7] Florita told her "that she was going with the accused to Palompon ** because ** he would give her a job there, and ** another reason was because she was scolded by her elder sister at home." Paz said, "So that's it," or words to that effect and left the room.

Still later, Paz Bonsilao came back to the room. Inday went out, and Lolo Bonsilao and Loreto Malbago entered the room. The latter switched on the light. They talked. Lolo asked Florita why she was with Loreto, and she gave him the same answer she had given Paz.[8] After a few moments of silence, according to the Trial Court (still summarizing Florita's testimony) -

" ** (Loreto suddenly) held together her two thighs with his left elbow as well as ** the wrist of her right hand, while Lolo Bonsilao held her left hand and Mrs. Paz Bonsilao, who was staying near her head, pressed her thumb and middle finger on ** (her) cheeks ** in order that her mouth could be opened and something which looked like coffee placed in a glass was poured into her mouth, thus, she was able to drink the liquid which tasted sweet and bitter, ** after which she became dizzy and did not know anymore what happened to her as she regained consciousness only at three o'clock dawn of the following morning and found out that she was still in the bedroom with Loreto Malbago lying beside her and was already awake; that when she woke up **, she cried because she already knew what happened to her as her vagina was already painful and she found out that she had nothing on any more except her sando underwear; that in the previous evening before the incident, she saw Loreto Malbago wearing an undershirt and long pants, but when she woke up ** she saw that the accused was not any more in his long pants, but only a brief 'Walker' and a sleeveless undershirt; that she went out of the bedroom ** and went to the sala, after which Loreto Malbago also went out and proceeded to the (other) bedroom where Lolo Bonsilao was and woke (him) up ** because according to the accused, they were already plying their bus, while she went back inside the bedroom; that when she woke up that early morning, the first thing she noticed when she sat near the feet of Loreto Malbago was her panty with blood, which she put on and went out of the room; that during the whole day of (that) Wednesday, she stayed in the house of Lolo Bonsilao with Mrs. Paz Bonsilao and went to ** (her) boarding house (at Ormoc City) at 8:00 in the evening, where her elder sister was also boarding, but when she arrived there, her sister was in the church and came back only at 8:30 when she was already asleep; that when she felt the pain on her vagina, she became worried and as she was schooling during that time, she did not any more go to school after the incident because she was ashamed, so she went home (to Barrio Rizal) **; and that when she examined the area on her body which was hurting, she found out in her anus that there was something like water, but was only sticky, which caused it to be wet." [9]

Florita stayed in the Bonsilaos' house the whole day of February 21, 1973, as above stated. Loreto returned from his trip to Tacloban City at about 3 or 4 o'clock in the afternoon, while she was still asleep. When she woke up, Loreto was having "a drinking spree at the kitchen, so she did not attempt to go near him." Loreto approached her when she was in the sala, however, and "they had a brief conversation." [10] She went home only at 8:30 in the evening "because she was ashamed to go out during the day." Besides, "Mrs. Paz Bonsilao prevented her from going out ** by saying, 'Do not go out because you might be seen,' to which she retorted saying, 'Why? I have not done anything wrong,' and Mrs. ** Bonsilao answered back, 'Never mind.'" [11]

On arriving at her boarding house, she found nobody there; apparently, everybody had gone to church. So she went to sleep. In the morning (February 22) at about 7 A.M. she went to Can-adieng, Ormoc City to "collect money." Then she went home to Barrio Rizal.[12] She got there at about noon; nobody was home. When her mother returned, she inquired if she "was able to bring the money to which she answered in the affirmative and that was all their conversation ** for that day." [13]

Three (3) days later, Florita sent a note to Loreto Malbago, "telling him to give her bag to a certain Mana Aurora." She sent the note through a friend, Estrellita Rebuyas, who picked it up from her home at about 3 P.M. on February 25, a Sunday.[14]

It seems that at about this time, her parents were already suspecting that something had happened to her. Her father had received a radiogram from his brother, a policemen in Ormoc, inquiring about her; and on that Sunday, February 25, 1973, she was intermittently questioned by her father. She finally told her mother about the incident at the Bonsilaos' house. The latter in turn told her father about it. When she was asked about it by her father, she refused to say anything. This enraged him and he struck her with his belt. She covered her face and evaded the blow, but in so doing, she hit herself against the wall.[15] She then told her, father everything.

Florita was brought the following day, February 26, 1973, to the Ormoc General Hospital where she was examined by the physician on duty, Dr. Pelagio Kierulf. He testified that his examination disclosed an abrasion on Florita's face caused by her having been hit by her father; that she was negative for spermatozoa; and that "the hymen was not damaged," there "was no penetration because not even a finger could ** (enter) the vagina of ** Florita Turtego." [16] In his medical certificate dated February 26, 1973, he set out his findings as follows:[17]

- "1. Old abrasion at the middle of the right face;
2. Presence of slightly fresh laceration of the hymen at 6:00 o'clock considering the orifice of the vagina as the face of
3. the clock.
4. Smear - negative of spermatozoa.

* * * "

In the course of her testimony, Florita expressed resentment against Teodoro Bonsilao for exposing "what happened to her" (and not for having taken part in the lascivious assault against her). According to her, "this incident could not have been known if not for Teodoro Bonsilao, alias Lolo, who like a charlatan, during his trips to Tacloban City, was telling his passengers about what happened to her and incidentally, one of her neighbors who took that trip heard it and told them about it; (however) she is not so angry with Teodoro Bonsilao and ** will think over first if she will file a case against him." [18]

In stark contrast to the extensive summary undertaken by the Trial Court of the testimony of Florita Turtego, there is not even a passing reference in its decision to the testimony of the accused-appellant, and only a few words respecting the evidence given by Teodoro Bonsilao, which it brushes aside not only "because he is a driver and as such has also a feeling of camaraderie on the accused, but also because he is a conspirator in the commission of rape * * ." [19] The summary and analysis of the testimony of the accused-appellant and his witness, Lolo Bonsilao, are instead set out in the Trial Court's Order of August 31, 1973, denying the appellant's motion for new trial.[20]

On the witness stand, Loreto affirmed that he had known Florita Turtego and her family for quite some time. He declared that he met Florita Turtego at the bus station in the morning of February 20, 1973, and she rode in the bus he was driving to Kananga. She told him she was bound for Tacloban. He advised her to go to her elder sister, but she refused, and said she would go with him wherever he went. She asked where he was residing. He told her he was staying in the house of Lolo Bonsilao. They went to that house. The Bonsilao spouses were not in; they had gone to the movies. What Loreto did was to leave Florita in the house, asking Lolo's Bonsilao daughter to entertain her, while he went back to work. That night, Florita slept in the room with the wife of Lolo Bonsilao while Loreto himself slept in the sala with Lolo's children.[21]

Teodoro (Lolo) Bonsilao testified that in the evening of February 20, 1973, he and his wife, Paz Inot, had indeed gone to the theater. Upon their return to their home at around 10:30 o'clock, they came upon Loreto and Florita, who were in the sala, dancing. Lolo also asked Loreto, "What is this all about?" Loreto said that they would just sleep there since it was already curfew. Lola thereupon asked Florita who her parents were, and when Florita told him, he said that her father was his friend. He asked Florita "if nothing worse will occur and ** (she) replied there is nothing." Mrs. Bonsilao was insisting that Florita should go home, but Lolo told Florita "that since it was already curfew hour he will permit her to sleep in his house provided the following morning she would go home." Florita Turtego slept in the room with Lolo Bonsilao, the latter's wife, and their small daughter.[22]

Bonsilao says he woke up at around 3 o'clock the following morning to find that Loreto had left for work even earlier. He himself then reported for work, and when he returned to his home at about 3 o'clock in the afternoon, he was told by his wife that Florita had departed after breakfast that morning.[23]

As already stated, the Trial Court convicted Loreto.[24] In its decision it declared that -[25]

" * * from the evidence presented by both parties, the accused had carnal knowledge of Florita Turtego when the latter was deprived of reason or otherwise unconscious, with the use of drugs contained in a glass of water applied by the accused in cooperation and conspiracy with Teodoro Bonsilao and Paz Bonsilao, taking into account the findings and report of Dr. Pelagio Kierulf * * .

While the doctor found no spermatozoa in the vagina of the complainant, this Court sustains the view that the woman was in fact raped, considering the laceration in the hymen and that there was penetration of the male genital organ on the complainant's vagina * * .

Whatever be the conclusion of the physician on the virginity of the woman as of the present will not alter the findings of this court that there was rape committed by the accused on the complaining witness, not only because the testimony of the complaining witness is in the ordinary course of human events and is found by this Court to be candid, sincere and credible as against the testimony of the accused who was hesitating and therefore, his testimony is found by this Court to be incredible.

The Court accordingly disposed of the case as follows:[26]

"WHEREFORE, this Court finds the accused LORETO MALBAGO guilty beyond reasonable doubt of the crime of Rape and this Court hereby sentences the accused to a life imprisonment; to indemnify the victim Florita Turtego in the sum of P12,000.00; and to recognize the offspring, if and when the complainant shall give birth to a child within the ordinary period of pregnancy from the date of the sexual intercourse on February 20, 1973.

The accused is credited with his preventive imprisonment as provided for by law.

Let a copy of this decision be furnished the Honorable Secretary of Justice as well as the City Fiscal for further prosecution of Teodoro Bonsilao alias Lolo Bonsilao and Paz Bonsilao in the commission of rape."

Some twelve (12) days after the promulgation of judgment, Loreto Malbago's attorney, Heliodoro T. Fiel, filed a motion for new trial on the ground of newly discovered evidence. The evidence consisted of a letter that Florita had supposedly asked one Cesar Maglasang to deliver to her sweetheart, Loreto, reading: "Dear Noy Nito,: Noy, bring my bag tomorrow and leave it at the corner, and tell that it should be brought by the honda in the afternoon, tell Man Aurea. Love, Inday." Maglasang's affidavit was appended to the motion.

This move proved disastrous. For when Cesar Maglasang gave evidence at the hearing of the motion for new trial, he denied material portions of his affidavit. That affidavit, according to him, was prepared by Loreto's lawyer, Atty. Fiel, in the latter's house. He disclaimed that part of the affidavit depicting Florita and Loreto as lovers,

although he admitted the portion referring to his intimate acquaintance with Florita's parents. He also denied the allegation in his affidavit that Florita had given him a note for delivery to Loreto, asserting that the note entrusted to him by Florita on February 20, 1973 was not for Loreto, but for Florita's mother, which he had delivered. While admitting that he had gone to see Loreto at the City Jail, he averred that it was for the purpose of paying for some pigs and not, as his affidavit states, to deliver any note to him.[27]

Moreover, the letter allegedly entrusted to Cesar Maglasang, marked as Exhibit "1," was discovered by the Court, upon examination, to bear "earmarks of a simulation or falsification with the addition of the word 'love' prior to 'Inday,' because a comparison of Exhibit 'X' with the handwritten word, 'love,' in ball pen and in pencil by the complainant clearly reveal the difference in the writing of 'love' before Inday in said Exhibit '1' and the word 'love' handwritten in open Court by the complainant in Exhibit 'X.'"[28]

The defendant's motion for new trial was consequently denied by Order dated August 31, 1973.[29] Hence, the present appeal in which Loreto Malbago pleads for reversal of the verdict of conviction and his acquittal on reasonable doubt on the basis of two (2) errors attributed by him to the Court a quo, to wit:

- 1) finding that he had carnal knowledge of Florita "when the People's own evidence positively shows the contrary," and
- 2) finding that Florita "was deprived of reason or was rendered unconscious with the use of drugs applied by the accused in cooperation and conspiracy with Teodoro Bonsilao and Paz Bonsilao, when there are facts and circumstances in the expediente making the testimony relative thereto ** incredible."

In substantiation of the first ascribed error, the appellant invokes the testimony of Dr. Pelagio Kierulf.[30] Dr. Kierulf's testimony is to the effect that -

1. Florita was still a virgin at the time he examined her with the use of a "vaginal speculum" six (6) days after the alleged rape;
2. Florita, on examination, was found negative for spermatozoa;
3. her hymen was intact, not damaged, there being only a very slight laceration thereof which however he did not believe could have been caused by the insertion of some object into her vagina; indeed, the physician's finger could not be inserted in that organ;
4. it was unlikely that that slight laceration was caused by penetration, of "a hard object, for example a penis," because, as the physician put it, "if you are also the man ** you do not have to stop there."

The appellant argues that assuming that Florita had been rendered unconscious by some drug and made incapable of presenting any resistance of any sort, there is no reason why the appellant would not have actually entered her while she was in that utterly helpless state, if in truth, what he intended was to have carnal knowledge of her. The fact is, however, that she was subsequently found to be still a virgin, with only a very slight laceration of her hymen. This demonstrates, the appellant submits, that her complaint of rape was "nothing but a fabricated charge," "more fictional than factual."

The appellant also contends that Florita's narrative of the things that transpired at the Bonsilaos' residence taxes credulity, is so unnatural as to be totally undeserving of credence.

The Court agrees.

It must at the outset be conceded that the evidence given by appellant Loreto Malbago is feeble, even contrived. But the proofs of the prosecution are of no better character, if not actually inferior. The familiar principle that the

prosecution must rely for a conviction on the strength of its proofs, and not on the weakness of those of the defense, is peculiarly applicable to the case at bar.

It is self-contradictory to assert as the Trial Court has in effect done, that rape was perpetrated on a girl who was found on expert medical examination six (6) days later, to be a virgin, her hymen intact and not damaged, there being only a very slight laceration thereof which however, in the view of the forensic expert who examined her, could not have been caused by the insertion of some object into her vagina, there having been "no penetration because not even a finger could ** (enter) the vagina of Florita Turtogo." [31] No explanation of the paradox has been given by the Trial Court or is otherwise furnished by the record.

Moreover, Florita's recital of the manner by which she was sexually assaulted, and the events thereafter transpiring do not inspire belief, being quite contrary to normal behavior and experience.

The locus of the crime could not be more inauspicious: a small two-bedroom house, then occupied by a married couple not shown to be otherwise than respectable, and "many teen-agers and children." [32]

Also, the co-conspirators of the rapist could not be a more unlikely pair: the owners of the house in which Florita's defloration had taken place: a married woman, who had come to know Florita only at that time, and her husband, Lolo Bonsilao, who knew Florita only slightly, both described as having spontaneously consented to the commission of a sexual assault in their own home, in which their own children, and their nephews and nieces were then sleeping.

Florita's own conduct subsequent to her violation could not be more improbable. When she recovered consciousness and discovered that she had been deflowered, she felt no anger, or panic, or other strong emotion; she did not confront the Bonsilaos or Loreto and denounce them, or attempt to flee that place of horror or otherwise seek assistance and vindication; she merely put on her panties though bloodied, and then, when Loreto went out to work in the early morning, simply returned to the bedroom and went back to sleep. What is more, she stayed in the house the whole day following the night of her rape, again neither confronting and remonstrating with the Bonsilaos nor trying to leave and complain to the authorities against them and Loreto Malbago. She even took a long siesta and was in fact still slumbering when Loreto returned to the house at about 4 o'clock in the afternoon. On waking up, she had a brief conversation with her ravisher, Loreto, in the sala. She left the Bonsilaos' home only at about 8 o'clock at night, went to her boarding house and, when she discovered no one there, again went to sleep.

Her subsequent acts were also most commonplace: she went to Can-adieng to "collect money," apparently on earlier instructions of her mother, then went home and gave the money to her mother. No effort was made to report her ravishment to her parents, to her sisters, or to the police. In fact, instead of denouncing Loreto Malbago, she wrote a note to him three (3) days later and had it delivered by a friend, asking him to do her a small favor, to give her bag to "Mana Aurora." She obviously had no intention of making known her alleged defilement to any one had not Lolo Bonsilao, according to her, gossiped to the passengers of his bus about "what happened to her," and one of the latter had told her father about it; and even then, she said she would still have to think about filing a case against him.

So often has it been said almost to the point of triteness that evidence to be believed must not only proceed from a credible witness, but must be credible in itself. Here we have an extremely incredible story, of the defloration of a girl who has yet retained her virginity, and who afterwards, instead of manifesting that great anger that might be expected of a maiden so grievously wronged, did nothing but the most pedestrian things, even requesting her supposed defiler to do an errand for her.

It is not difficult to reconstruct what really happened: Florita's parents were unwilling to accept her declaration that nothing had happened between her and Loreto, and that she had gone with him to the Bonsilaos simply out of pique resulting from her elder sister's scolding, and because of the prospect of obtaining a job at another place; her parents were clearly of the impression that the story would not be believed by their relatives and friends, and would bring disgrace to Florita and her family; hence, the ideation of a new version of the incident, to protect Florita's honor, which was the version recounted to the investigators and eventually the Trial Court. The stratagem was helped along by the bungling of Loreto and his counsel who, instead of standing by the truth, made what the Trial Court perceived to be a clumsy attempt to embellish an innocuous note of Florita to Loreto and make it appear as a communication between lovers. Be this as it may, the Court cannot affirm a conviction of such a grave crime as rape on the basis of a demonstrably unnatural and unpersuasive narration of facts by the complaining witness.

WHEREFORE, the judgment of conviction appealed from is REVERSED and the accused-appellant is ACQUITTED, with costs de oficio.

SO ORDERED.

Cruz, Griño-Aquino, and Medialdea, JJ., concur.
Gancayco, J., on leave.

[1] Criminal Case No. 396-0; decision rendered on June 13, 1973 by Hon. Numeriano G. Estenzo; reproduced at pp. 16-33 of the rollo

[2] Rollo, pp. 19-20; 89: Brief for Accused-Appellant, Decision thereto appended, pp. 4 - 5

[3] Rollo, p. 28; Brief for Accused-Appellant, Decision thereto appended, pp. 13-14. Her older sister, Fe, deposed that Loreto Malbago was a frequent caller at their home (rollo, p. 17)

[4] Id., p. 21

[5] Id., pp. 20, 27

[6] Id., pp. 20-21

[7] Id., p. 21; p. 89: Brief for Accused-Appellant, Decision appended, p. 14

[8] Id., pp. 21-22

[9] Id., pp. 22-23

[10] Id., p. 27

[11] Id., p. 26

[12] Id., p. 27

[13] Id., p. 28

[14] Id., pp. 27-28

[15] Id., p. 28

[16] Id., pp. 16-17

[17] Id., pp. 30-31

[18] Id., pp. 29-30

[19] Id., pp. 32-33

[20] Id., pp. 34, 40-42

[21] Id., pp. 40-41

[22] Id., pp. 41-42

[23] Id., p. 42

[24] SEE footnote 1 at page 1, supra

[25] Id., pp. 30-31

[26] Id., p. 33

[27] Id., pp. 39-40

[28] Id., p. 43

[29] Id., pp. 34-45; SEE footnote 20

[30] TSN, May 11, 1973, pp. 3-9

[31] SEE preceding footnote

[32] SEE footnote 7 and related text, at p. 2, supra

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