

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTHUR MENDOZA, ACCUSED-APPELLANT.

G.R. No. L-50882. January 30, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Appeal from the decision of the Court of First Instance of Antique sentencing accused Arthur Mendoza to the principal penalty of reclusion perpetua, and to indemnify the victim, Henrietta Maguad, in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, together with the accessory penalties prescribed by law, for the crime of rape, committed according to the evidence of the prosecution, and quoting from the People's brief, as follows:

"Complainant Henrietta Maguad was at the time of the incident, a 1st year Commerce student of St. Anthony's College at San Jose, Antique, 21 years old, single, and residing with her parents at Barrio Caridad, Hamtic, Antique, (pp. 1-3, t.s.n., Aug. 5, 1976).

"On August 4, 1975, at about 7:00 o'clock in the evening, Henrietta, together with other students, was waiting for a ride in front of St. Anthony's College in San Jose, Antique, on her way home to Hamtic after attending classes (pp. 4-6, t.s.n., *ibid*). A few minutes later, a pick-up vehicle driven by accused-appellant herein, Arthur Mendoza, stopped in front of said students. On board the pick-up, aside from accused-appellant, were Mayor Julius Pacificador of Hamtic, Rodolfo Mendoza, and an unidentified man. Upon the invitation of Mayor Pacificador, twelve students bound for Hamtic, including complainant Henrietta, boarded the vehicle (pp. 7-10, *id.*).

"Four female students occupied the driver's cabin where Arthur Mendoza and an unidentified man were seated. Mayor Pacificador and Rodolfo Mendoza, on the other hand, transferred to the open cargo compartment at the rear section of the pick-up where the rest of the students, together with Henrietta, were accommodated. The pick-up then proceeded on its way to Hamtic, Antique, where the accused-appellant herein and his brother Rodolfo Mendoza reside (pp. 10-13, t.s.n., *id.*).

"At the crossing of La Paz Hamtic, Mayor Pacificador and one female student named Marianita Rumbines alighted (pp. 17-18, *id.*). Thereafter, the pick-up continued its journey towards the poblacion of Hamtic. Upon reaching Hamtic's public market, the rest of the students disembarked except for complainant Henrietta who was prevailed upon by Arthur and Rodolfo Mendoza to stay on the assurance that they would drop her at her residence in Barrio Caridad, Hamtic, about 100 meters away from the public market (pp. 18-20, 24-25, *id.*).

"Henrietta was thus left in the open cargo compartment of the pick-up together with Rodolfo Mendoza. She was then seated on the spare tire which was lying on the compartment's floor, while inside the driver's cabin were accused Arthur Mendoza and the unidentified man (pp. 11, 18-19, *id.*).

"Upon reaching Barrio Caridad, complainant Henrietta stood up and tapped the back portion of the driver's cabin for the vehicle to stop, at the same time saying, "Stop, Stop!". The pick-up, however, did not stop. Instead accused Arthur Mendoza increased its speed. Henrietta thus shouted "Stop, Stop," but the pick-up still

continued on its way. At that very moment, Rodolfo Mendoza boxed Henrietta in the abdomen to silence her. Sensing danger, Henrietta shouted for help, but Rodolfo Mendoza boxed her again in the abdomen twice. As a consequence, Henrietta crumbled in pain and collapsed on the floor of the cargo compartment trying to catch her breath (pp. 25-26, 29, 30, 38, id.).

"Shortly thereafter, while they were still within the vicinity of Hamtic, Antique, accused Arthur Mendoza stopped and parked the vehicle near a ricefield where there were trees. Arthur Mendoza then alighted and hurriedly went to Henrietta. He was followed by the unidentified man. Immediately, Arthur covered the mouth of Henrietta with his hands. At the same time, Rodolfo Mendoza put his arms around Henrietta's armpits, while the unidentified man held Henrietta's wrists. Together, the trio carried the struggling Henrietta out of the vehicle to a secluded place in the ricefields 10 meters away from the elevated national road (pp. 30-35, id.).

"When they reached the ricefield, the trio forced Henrietta to lie down on her back. Rodolfo Mendoza held Henrietta's breast while pressing her shoulder down to the ground. Simultaneously, the unidentified man held Henrietta's two legs, while Arthur Mendoza covered her mouth with his hands. In the meantime, Henrietta was struggling and kicking to free herself, but to no avail (pp. 36, 38-39, id.).

"When Henrietta was already lying on the ground, Arthur Mendoza hurriedly pulled open with his right hand the zipper of Henrietta's jeans as his left hand covered her mouth to prevent her from shouting. Arthur then forcibly pulled down Henrietta's jeans together with her bikini panty down to below her knees. In the process, the panty as well as the jean's hip line and seam line were torn (pp. 36-38, t.s.n., Aug. 5, 1976; p. 86, t.s.n., Sept. 9, 1976; Exhs. "A", "A-1", "A-2" and "A-3", Rec.).

"Then, the unidentified man who was holding Henrietta's legs removed the jeans and the panty from Henrietta's left leg, leaving them hanging on the right leg. Thereafter, Arthur took off his pants and brief. As Arthur was about to place himself on top of Henrietta, the unidentified man spread her legs apart and moved backward from between Henrietta's legs which he was tightly holding to give room for Arthur Mendoza. When Arthur was already on top of Henrietta, he began pushing his sex organ towards Henrietta's private part. Henrietta, on the other hand, continued to struggle. She was crying and was moving her hip sideways to avoid penetration. Arthur nonetheless, was able to insert his penis inside her vagina. Because of the penetration, Henrietta felt pain and her private part started to bleed. Arthur then went on a push-and-pull movement. After a couple of minutes, Arthur ejaculated inside Henrietta. Having satisfied his carnal desire the accused-appellant then stood up and put on his brief and trousers. Henrietta, who was crying in shame, was then allowed to put on her torn panty and jeans (pp. 40-44, 89-93, id.).

"Thereafter, Henrietta was brought back by the trio to the cargo compartment of the pick-up. Arthur Mendoza then drove the vehicle and after travelling a short distance, and while the pick-up was in motion, the unidentified man pushed Henrietta out of the vehicle. Henrietta fell hard on the pavement and was knocked unconscious by the impact.

"Arthur Mendoza became apprehensive upon seeing Henrietta lying unconscious on the road. He thus made a u-turn and went back to where Henrietta fell. They brought Henrietta to the Antique Provincial Hospital where the accused tried to hide the rape incident by telling the attendants that Henrietta fell from the pick-up (p. 28, t.s.n., Sept. 8, 1978).

"Henrietta remained unconscious in the hospital for 16 days, or until August 20, 1975 (p. 46, t.s.n., August 5, 1976). She was examined and treated by Dr. Lino Hernaez of the said hospital, who submitted the following medical findings:

"Physical findings:

(1) Abrasions, multiple (a) left face (b) left eyebrow (c) left shoulder (d) right face (e) upper lip (f) left elbow (g) left lumbar area.

(2) Hematoma (a) occiput, left 2 inches diameter (b) peri-orbital area, right.

(3) Fracture, simple, middle third, tibia left.

Internal Findings:

Vagina -- admits one finger easily without resistance.

Cervix -- Closed

Hymen -- laceration 9 o'clock in the face of the clock with moderate hemorrhage.

Vaginal smear -- positive for the presence of spermatozoa."

(Medical Certificate, Exh. "E", Rec.; Bold types supplied, pp. 114-123, t.s.n., November 11, 1976).

"Because of several fractures sustained by Henrietta, she was confined in the hospital for fifty-two days, or until September 28, 1975 (pp. 123-126, t.s.n., November 11, 1976). Thereafter, Henrietta filed this complaint for rape against Arthur Mendoza, Rodolfo Mendoza and the unidentified man (pp. 49-50, t.s.n., Aug. 5, 1976)."[1]

The foregoing version of the prosecution is not disputed by the appellant except as to the commission of the rape and the manner the complainant fell from the vehicle. The story of appellant is that nothing untoward happened during the ride until complainant fell from the vehicle because she lost her balance as she tried to alight while the vehicle was still in motion, not that she was pushed off therefrom as she claimed. Hence, his only assignment of error is the trial court finding him guilty of rape as charged.

Appellant would brand the testimony of the complainant as totally incredible and unworthy of belief. Thus he points to the testimony of the medico-legal witness that no visible external injury was found on the abdomen of complainant as well as to the finding of the lower court that there was no evidence to show that Rodolfo Mendoza stayed at the back compartment of the vehicle with complainant, as showing the falsity of her testimony that she was boxed on that part of her body by said Rodolfo Mendoza.

The absence of visible external injury on the abdomen of complainant does not by itself disprove her assertion that she was boxed there by Rodolfo Mendoza. The doctor himself explained that because of the softness of the abdominal region, fist blows would not necessarily produce hematoma or any external injury thereon.[2]

As to whether there is evidence that Rodolfo Mendoza, who was also accused but acquitted, stayed with complainant at the back compartment, what better showing could there be than complainant's own testimony that she was boxed there by Rodolfo? There is testimony that when the students boarded the pick-up, Mayor Pacificador and Rodolfo Mendoza transferred to the cargo compartment when four (4) female students occupied the driver's cabin.[3] Rodolfo and complainant remained in the back compartment when the other students and the Mayor disembarked.[4]

Appellant then points to the testimony of Dr. Hernaez that the jeans of complainant "were not torn,"[5] contrary to complainant's testimony that her jeans were torn when appellant forcibly pulled it down. What Dr. Hernaez stated is that he did not notice that the jeans were torn, and this must be so because the torn portion is along the hip line from the waist down which was soaked with blood as to become not immediately noticeable. The jeans which was presented in court as exhibits[6] showed the torn portion.

Pursuing his attempt to assail complainant's credibility, appellant contends that if the unknown man was sitting between her legs as she testified when she was forced to lie on the ground, it would not be possible for him (appellant) to have performed sexual intercourse on top of her, as she pictured the manner the crime was committed.

As the Solicitor General clearly demonstrated, the argument of appellant is misleading, as he quoted only portions

of complainant's testimony on this particular matter. Quoted more fully, complainant's testimony would show that before appellant placed himself on top of her, the unknown man moved backward to give way to appellant. Thus -

"Q. Where was the person who has hold you by the legs when Arthur Mendoza had pulled off the panty and the jeans?

A. While my legs had spread apart, that person who was then holding my legs was sitting on the place between my legs.

COURT:

Q. You mean to say with a person sitting between your legs which were spread apart, Arthur Mendoza was able to lie on top of you?

A. Yes, sir.

Q. How far or in what particular portion between your legs did this person sit between your ankle or knee space, between the feet and the knee?

A. When Arthur Mendoza laid on top of me the person whom I do not know moved a little backward, held me by my legs and below the knee and spread it apart.

(pp. 41-42, t.s.n., Aug. 5, 1976)"[7]

Again, appellant would mislead this Court in claiming complainant to have contradicted herself when she said that it was Arthur Mendoza who pressed her shoulders to the ground but that in answer to the Court, she said it was Baby (Rodolfo) Mendoza who did. Her testimony shows that she mentioned "Baby Mendoza" but it was the trial court in its decision which mentioned Arthur Mendoza erroneously, instead of Baby Mendoza, either by honest mistake or that the mistake was due only to typographical error.

The fact that her left shoulder was pressed to the ground and her right hand was pinned by the body of appellant explains why complainant did not succeed in her effort to scratch the back of Baby Mendoza, even if her hands were free as she stated, which appellant tried to stress, again to show another alleged flaw in complainant's testimony.

That complainant's panty was not presented in evidence does not create a "serious doubt" as appellant claims, entitling appellant to acquittal. This contention is far-fetched, in light of the very plausible explanation given by complainant that because it was dirty it had to be washed. It would, therefore, serve no practical or useful purpose to present it in court, specially as it would only be corroborative in effect. What is instead demonstrated is complainant's disinclination, if not complete aversion, to do anything that would subject her to shameful embarrassment and degrading experience except when so compelled to vindicate her honor. In any case, this piece of evidence is unnecessary in the face of the overwhelming evidence already presented that she was a victim of rape.

The physical examination conducted only 30 minutes after the rape,[8] showed unmistakable signs of its commission. Dr. Hernaez noticed profused bleeding and rugosities in the vagina. A vaginal smear test yielded positive results for the presence of spermatozoa.[9] There was a fresh laceration at 9:00 o'clock in the hymen[10] and the breasts had signs of bruises.

That complainant was raped in the manner she narrated, and by no other person than appellant admits of not the least doubt. Complainant had been continuously in school before she took the ride in appellant's vehicle. She could not have had a tryst with a lover, and perform a sex act with him while she is supposed to be in her classes.

It was not unusual, as appellant would also contend, for complainant not to immediately tell her attending physician that she was raped. How could she have done so when she was unconscious after the sexual assault and remained so for many days more? On regaining consciousness, she knew she had already been examined physically. She had enough sense to know that after the examination, her attending physician had known what traumatic experience she had gone through. But she did reveal what happened to her parents as soon as she recovered from unconsciousness, as was naturally to be expected in her desire to receive the comforting reassurance of her loved ones, after the tragedy that has befallen her.

There need not be much fuss about how the injuries sustained by complainant were caused or inflicted. Whether We accept the theory of appellant that complainant accidentally fell from the vehicle and sustained the injuries instead of complainant's version that she was deliberately pushed off the running vehicle, the liability of appellant for the crime of rape, in light of the other evidence, is unavoidable. Violence was employed by appellant to consummate the crime together with Rodolfo Mendoza and the third man still to be identified. That the accused in this case, including Rodolfo Mendoza, abused their superior strength to subdue complainant's resistance is adequately proven. That Rodolfo Mendoza was acquitted by the trial court under the evidence of record could raise some eyebrows, but this is just so much water already gone under the bridge.

WHEREFORE, the judgment appealed from, being in accordance with law and the evidence insofar as appellant Arthur Mendoza is concerned, is affirmed in toto, with costs.

SO ORDERED.

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

[1] pp. 2-8, Appellee's Brief.

[2] pp. 134-135, t.s.n., Nov. 11, 1976.

[3] pp. 10-13, t.s.n., Aug. 5, 1976.

[4] pp. 18-19, Id.

[5] pp. 18-19, Appellant's Brief.

[6] pp. 37-38, t.s.n., Aug. 5, 1976.

[7] p. 12, Appellee's Brief.

[8] p. 112, t.s.n., Nov. 11, 1976.

[9] p. 123, t.s.n., Nov. 11, 1976.

[10] pp. 120 & 153, Id.

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