

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE INOT, DEFENDANT-APPELLANT.

G.R. No. L-36790. May 29, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the decision of the then Court of First Instance of Cebu, Bogo Branch,[1] in Criminal Case No. BO-105, finding the accused Felipe Inot guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, to pay complainant Flora Noveranes the sum of P2,000.00, by way of moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The Information alleges:

"That on the 29th day of August, 1971, at 11:00 o'clock in the evening, more or less, in the barrio of Nailon, Municipality of Bogo, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused entered the house of Flora Noveranes without permission and once inside, did then and there, willfully, unlawfully, and feloniously have sexual knowledge with the said complainant, Flora Noveranes while the latter was unconscious being alone asleep at the time, and against her will and without her consent.

"That in the commission of the crime, the following circumstances were present: (1) the offense was committed at night time and (2) with the use of superior strength.

"In violation of Article 335, Sec. 2, in relation to Article 14 of the Revised Penal Code."

The facts, as found by the trial court, are as follows:

"That both the complainant and the accused are residents of barrio Nailon, Bogo, Cebu. On August 29, 1971, the complainant after taking her supper went to sleep. Her husband, Bienvenido, was earlier fetched by the accused for a drinking spree at about 6:00 P.M. She took her supper at 7:00 P.M. After she took her supper, she went to sleep alone. At about 11:00 while she was already asleep, something unusual happened. A man got on top of her and while he was on top of her, she found out that the man's penis was already inside her vagina. She believed that the man was her husband and so she responded when the man ejaculated. She also ejaculated because of her belief that the man was her husband. It took him about five minutes before he could ejaculate. Then the man sat by her right side. She called the name of her husband believing it was he. She told the man to light the lamp because she would urinate. She called the man twice. The man did not answer. Because he did not answer, her breast trembled and so she stood up and she noticed that the man was in a squatting position. She embraced him to find out why he did not answer. She discovered that the right arm of the man was cut off from the elbow. She said "Felipe, so it is you." The man said "Flor, keep quiet." She held his collar so he could not escape, saying "Help, there's a man." She shouted twice. When she shouted, the man pushed her chin. She staggered backwards to the wall. Then Felipe ran towards his house. She went down, picked a paddle on the stairs and chased him. She was not able to catch him. He proceeded to and went up his house but went down in the kitchen. She did not anymore follow him because the back of their house was dark. She went back home,

crying. On the way home, she met her husband, that is, in between the house of Felipe and her house. Her house is just about 20 meters to the house of Felipe. She told her husband that Felipe came up the house and lied with her. She told her husband that Felipe was able to have sexual intercourse with her. Then Bienvenido got up the house to get some bolo with the intention to go to the house of Felipe. When she (Flora) told her husband that Felipe was no longer in his house, Bienvenido just brandished his bolo and shouted, "Pare, you come out." They are compadres. Felipe did not come out. She (Flora) told her husband not to look for him. She suggested to her husband that they should go to the municipal building of Bogo. In effect, they went to the municipal building of Bogo at about past 11:00 already that same evening. Once in the municipal building, they reported the matter to Braulio Toring and Vicente Canama and Pael Ruiz. Felipe was apprehended actually at past 12:00. It was raining. She reiterated that the man who had carnal knowledge of her was Felipe Inot. He is there (witness pointing to Felipe Inot). She recognized his voice on that evening and felt his right arm which is cut."[2]

On appeal, appellant has raised the following assignment of errors:

1. The lower court erred in admitting without qualification the testimonies of the prosecution witnesses despite the fact that from the evidence adduced, said testimonies are not only full of inconsistencies but biased as well.
2. The lower court erred in not giving credence to the defense of alibi of defendant-appellant Felipe Inot.
3. And finally, it was grievous error for the court a quo to convict defendant-appellant for rape in the absence of direct positive evidence to show his guilt beyond reasonable doubt.

Appellant contends that, contrary to the findings of the lower court, the testimonies of the prosecution witnesses cannot be the basis of his conviction because they are allegedly replete with inconsistencies. As proof, appellant made a comparison between the testimony of the complainant during her direct examination and during her cross-examination. Appellant states that on direct examination, complainant testified that it was only after a man had sexual intercourse with her and after she embraced that man, when she discovered him to be wearing a sweater and his arm amputated from the elbow. But on cross-examination, complainant declared that, during the sexual act, the man having sexual intercourse with her, supported his body with his two hands. It is appellant's contention, therefore, that complainant was not telling the truth and that what she related to the court was a mere fiction.[3]

Appellant's contention is without merit. While it is true that complainant related, during cross-examination, that the man who had sexual intercourse with her supported his body with his two hands and, while he was on top of her, she held both of his arms, such statement does not necessarily mean that the man was not the appellant whose right arm is admittedly lopped off from the elbow. It is to be noted that complainant did not specify what particular portion of the man's right arm she held. Considering that an arm consists of two parts, the upper-arm which extends from the shoulder down to the elbow and the lower portion which is from the elbow down to the hand, complainant could have grasped the man's upper arms (including the right upper arm), so that she could not detect during the sexual act the physical deformity of the accused. Besides, complainant believed that the man on top of her was her husband and she was very tired that night, having carried boxes in the daytime.[4] She is not expected to discern every detail during the sexual act.

On the other hand, complainant's identification of the appellant was not based solely on the latter's physical defect, but by his voice as well, when he warned complainant, "Flor, keep quiet." Although complainant did not see appellant's face during the sexual act because the house was dark, nevertheless, no error could have been committed by the complainant in identifying the voice of the accused, inasmuch as complainant and appellant were neighbors; she had acted as a babysitter for appellant's child; she used to sell fish to appellant's wife; and appellant is the compadre of her husband.

Concededly, complainant's husband, one of the prosecution witnesses, made a mistake in testifying that it was he and Corporal Vicente Canama who apprehended appellant in his house in Nailon, Bogo, Cebu. This error, however, is minor, having no relevance to the proof of the commission of the offense. And, in any event, appellant does not dispute the fact that he was indeed apprehended in his house by members of the Bogo Police Department.

The claim of appellant that he could not have possibly committed the crime for he was already dead drunk and sound asleep in his house at the time the offense was committed, has no merit. This Court has repeatedly held that:

"Alibi is one of the weakest defenses that can be resorted to by an accused (People vs. De la Cruz, 76 Phil. 701). To establish it, the accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission. x x x." [5]

And, as the Solicitor General in his Brief, aptly observed:

"In the case at bar, it has been fully established that the house of appellant where he was allegedly sleeping at the time the incident in question happened, was only about 20 meters from the house of the complainant. It was not impossible therefore for appellant to have left his house and proceeded to complainant's house and after committing the offense, returned to his house." [6]

Appellant's assertion that there is absence of direct and positive evidence to prove his guilt beyond reasonable doubt cannot be given much credit. He has been positively identified so that his defense of alibi must fail. [7] Neither can we give weight to the contention that the medical certificate of the complainant should have been presented, for the reason that medical certificates are not indispensable in the prosecution of rape. [8]

Furthermore, the fact that when the rape was committed, complainant was asleep will not make appellant less guilty. This Court has already ruled in the case of People vs. Caballero [9] that:

"When the offended party awoke, the crime of rape committed by the appellant was already consummated, having had carnal knowledge with the offended party while she was unconscious for being asleep. The offended party's consent to the act was subsequent thereto and it was given on the belief that the man lying with her was her husband. It is evident that the offended party would not have consented to the act, had she known that the man with her was not her husband, as she in fact expressed her unwillingness to said act as soon as she discovered that the man whom she thought to be her husband was the appellant." [10]

WHEREFORE, except with the modification that the civil indemnity to the offended party is raised to P20,000.00, the decision appealed from should be, as it is, hereby **AFFIRMED**.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Paras, Bidin, and Cortes, JJ., concur.

[1] Hon. Antonio D. Cinco, presiding

[2] Rollo, pp. 158-160.

[3] Appellant's Brief, p. 142.

[4] TSN, January 3, 1973, p. 31.

[5] People vs. Jimmy Tamba, et al., G.R. No. 71272, January 29, 1987.

[6] Brief for the Appellee, pp. 12-13.

[7] *People vs. Aragona*, 138 SCRA 569.

[8] *People vs. Pielago*, 140 SCRA 418.

[9] *People vs. Caballero*, 61 Phil. 900.

[10] See the cases of *People vs. Dayo*, 51 Phil. 102; *People vs. Corsino*, 53 Phil. 234.

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