

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO R. OCAMPO, DEFENDANT-APPELLANT.*G.R. No. L-47335. August 13, 1986*

Ponente: MELENCIO-HERRERA, J.

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Convicted of Rape and sentenced to reclusion perpetua by the then Court of First Instance of Pangasinan, at Villasis, the accused Roberto R. Ocampo has interposed this appeal challenging mainly the credibility of complainant, SEVERINA M. Valdez, and the appreciation of evidence by the Trial Court.

A narration of the incident, as made by SEVERINA, has been syn-thesized by the People as follows:

"Severina Valdez [24 years old and single] complainant in this case, is a resident of Bo. Bantog, Victoria Tarlac (pp. 3,10, tsn. Oct. 22, 1976). She has a sister, Narcisa who is married to the appellant [Roberto]. The couple lives in Bo. Bued, Binalonan, Pangasinan (pp. 4-5, 10, id).

"On October 8, 1975, appellant's mother, who had died earlier, was interred. Since October 12, 1975, Severina was in the house of appellant for a visit and to help and keep company with his family (p. 11, id).

"On October 25, 1975 at around 3:00 o'clock in the afternoon, Severina was washing clothes outside appellant's house, at the pumpwell used for washing and bathing Earlier her sister, Narcisa, left for Urdaneta 9 kilometers away to do some marketing. In the house were the appellant and his two children, Nimfa and Edna - ages 4 and 3, respectively (pp. 11-16, id). While Severina was washing, appellant who was upstairs called for her to help him look for a marriage contract, and a watch. She went up the house, entered the room where appellant was calling and asked him what he wanted. Appellant, apparently agitated, commanded her to look for the articles inside the aparador or wardrobe. As she complied, appellant went out of the room. Earlier she saw the children playing in the sala as she was going up the house (pp. 13, 17-20, 22, id; pp. 13-14, tsn, Dec. 3, 1976; pp. 25-26, tsn, July 26, 1977).

"When the appellant returned to the room, Severina told him that she could not find the articles. She was then facing the aparador. kneeling with her back towards appel-lant. While she was rising, appellant grabbed her from behind, put his arm around her neck and pushed her down. Severina fell to the floor, face upwards and screamed. Angered by he screams, appellant squeezed her neck and boxed her abdomen. She stiffened and got dizzy, but managed to struggle when appellant was mashing her breast. Her effort was met with more fist blows on her abdomen. She also received karate blows on her thighs. She lost consciousness thereafter (pp. 21-24, tsn, Oct. 22, 1976; pp. 31, 33-34, 36, 44, 46, tsn, Dec. 3, 1976).

"At this point, appellant removed her panty (Exh. 'H'), went on top of her and had coitus with her. When she regained consciousness, she felt pains in her vagina and saw appellant on top of her, with his penis inside her vagina (pp. 24-26, 60-61, 84-87, tsn, Oct. 22, 1976). Immediately, she pushed him and stood up, picked up her panty on the floor and put it on. She attempted to run outside but appellant blocked her way and threatened her by saying: 'You try to go out and I will shoot you' - 'If you report the matter to the authorities or to your parents or sister I will shoot you all.' (pp. 27-28, id). Afraid she cried and stayed in the room which was closed and guarded by appellant. She stayed there for an hour or two until appellant left the house for Urdaneta (pp. 28-29,

id).

"Severina lost no time reporting the incident to her sister who returned home at about 6:30 o'clock in the evening of the same day, October 25. The two sisters em-braced each other and cried (pp. '29-30, id; pp. 61-62, tsn, Dec. 3, 1976).

"Appellant arrived home at around 9:00 o'clock in the evening. Severina was already asleep in the same room where appellant and her sister also slept. She was sleeping on the floor between the children while the couple slept on 'the bed (pp. 30-32, tsn, Oct. 22, 1976; pp. 67-68, tsn, Dec. 3, 1976). Between 11:00 o'clock and 12:00 o'clock that night. Severina was awakened by a hand touching her private parts. When she opened her eyes, she saw appellant pointing a bolo at her. She wanted to shout but appellant immediately covered her mouth with his hand and whispered: 'Do not make noise because your sister might be awakened and I will kill both of you.' She did not move or say anything. Appellant, thinking she would yield, put down the bolo beside her. When he was in the notion of going on top of her she grabbed the bolo and thrust it towards him. He was hit on the left breast. He immediately grabbed the bolo from her. But Severina had already stood up and ran out of the house. She went straight to the house of Lino Valdez, a barrio councilman, and sought his help (pp. 32-37, tsn, Oct. 22, 1976; pp. 14, 20-33, tsn, Jan. 19, 1977). Not long thereafter, appellant's wife and the older daughter, Nimfa, joined her there. The barrio official brought them to the municipal building of Binalonan. On the following morning, October 26, she and her sister gave their Written statements to the police (Exhs. 'C' & 'D', respectively, pp. 2-5, rec.; pp. 37-40, 44-51, Oct. 22, 1976; pp. 34-36, tsn, Jan. 19, 1977).

"That same morning of October 26, Severina submitted herself to a medical examination upon advice of the police authorities. She was examined by Dr. Rodolfo Parayno at the Urdaneta General Hospital. The examination was reduced into writing and marked Exhibit 'B' (p. 6, rec.; pp. 40-43, tsn, Oct. 22, 1976; pp. 51-54, tsn, Jan. 21, 1977). Severina left for her home in the afternoon of that day after the investigation of the police, the medical exami-nation, and the filing of the complaint (pp. 5-6, tsn, Jan. 19, 1977).

"Appellant was also brought to the doctor's hospital at Urdaneta on the very night of the incident. He was treated for wounds on his left breast and left palm (pp. 40-41, tsn, Jan. 19, 1977).

"Appellant's wife, Narcisa Valdez, left the conjugal home with her children from the time of the incident, and never returned to live with the appellant. She and her children never visited the appellant during the 4 or 5 days that he was confined at the hospital (pp. 20--21, 32-33, 63-65, tsn, July 8, 1977.)"[1]

ROBERTO however, depicted the incident differently:

"The appellant denied having sexual intercourse with the complainant on the date complained of. According to him, he was in Urdaneta, Pangasinan, at the time of the alleged incident (tsn, 8 July 77, p. 3). That day, he had lunch at home at about 12:30 noon. Thereafter, he repaired to the bedroom and fell asleep after reading komiks for about an hour. On awaking, he saw the complainant seated on the edge of the bed where he was lying down folding washed clothes. He asked her why she was there and warned that her sister might get angry. She replied that she was not doing anything but folding clothes (tsn, 8 July 77, pp. 4-6). Then, he moved his thigh towards her body and actually touched her thighs. She did not move. He held her hand, pulled and kissed her. She responded, and they kissed each other lying down on the bed. He placed his right leg over her body, inserted his right hand underneath her shorts and panty and fingered her. She did not say anything but continued embracing and kissing him. Nothing more than that happened (tsn, 8 July 77, pp. 7-9). Just then, his children came running upstairs. He and the complainant got frightened and they moved away from each other (tsn, 8 July 77, pp. 9-10). The complainant immediately left and met the children at the door of the room. They went down (tsn, 8 July 77, pp. 11-12). He remained lying down on the bed for about fifteen or twenty minutes and then left for Urdaneta before 3 o'clock that same afternoon (tsn, 8 July 77, pp. 12-13). At the time of the tryst, his wife was in his sister's house (tsn, 8 July 77, p. 12).

"He came home between 10 and 11 o'clock in the eve-ning, a bit drunk, and very sleepy. His wife served his

supper, and immediately thereafter he went to bed (tsn, 8 July 77, pp. 13-15).

"He denied having attempted molesting the complainant that evening. According to him, he was stabbed in his sleep and was thus awakened. At first, he thought that the pain he felt in his chest was due to his heart ailment, and so he put his hands over his heart but then he felt a bolo and as he stood up to catch his breath, he released the bolo. Just then he heard someone rush out of the room, bump the t.v. set, go down and fell down the stairs (tsn, 8 July 77, pp. 15-17). He ran towards the window and saw the complainant running. He looked for his wife and children and they were gone (tsn, 8 July 77, p. 18). He went down and called out that he was stabbed, Saturnino Diemsen came to his aid (tsn, 8 July 77, p. 19). He was brought to the hospital (tsn, 8 July 77, p. 20).

"He learned afterwards that it was the complainant who stabbed him. However, he chose not to file a complaint against her because his wife would be involved and no one would take care of their children (tsn, 8 July 77, pp. 21-22). He suspected his wife's involvement in his stabbing from the fact that when he was stabbed his wife and the children were no longer there. Also, she did not visit him in the hospital (tsn, 8 July 77, pp. 32-33).

"The skirt marked Exh. E was not worn by the complainant on the date of the alleged incident. She was wearing shorts (tsn, 8 July 77, pp. 34-35). The skirt belonged to his wife who used it when washing clothes and the torn portion marked Exh. E-1 had always been there (tsn, 8 July 77, pp. 35-36). Neither did she wear the blouse marked Exh. F (tsn, 8 July 77, pp. 36-37).

"The appellant also said that at the time of the alleged incident, Saturnino Diemsen and Estelita Mauricio were in his house (tsn, 8 July 77, pp. 44-45)."[2]

Defense witness Saturnino Diemsen and Estelita Mauricio corroborated the foregoing version with Diemsen stating that he was playing "dama" with ROBERTO's father under the house between 1:00 and 5:00 o'clock in the afternoon of the incident and that nothing happened in the house between those hours. Estelita Mauricio declared that she and SEVERINA were washing clothes at about 2:00 P.M. in the afternoon of October 25, 1975 and that she knew of nothing that happened to SEVERINA that afternoon.

By the nature of the offense of Rape, conviction or acquittal depends almost entirely on the credibility of complainant's testimony because of the fact that usually only the participants can testify as to its occurrence.[3]

We agree with the Trial Court's rejection of appellant's defense, thus:

"There are a lot of inconsistencies and improbabilities in the testimony of the accused which do not inspire belief. For instance, he claims that in the afternoon of October 25, 1975, the complainant went to his room and sat on the edge of the bed where he was sleeping, folding laundered clothes and when he tried to make advances to her she did not protest. As a matter of fact, he even inserted the middle finger of his right hand inside her vagina and she did not move, having enjoyed it, because according to the accused she kissed and embraced him while he had his finger inside her private parts. He claims that no altercation or differences existed between him and the complainant. Neither did he and his wife Narcisa have any differences or trouble before this date but between 11:00 and 12:00 o'clock of the same day or only a few hours after that blissful meeting in the room of the accused, the complainant stabbed him. The Court asked the accused what motivated the complainant to do such an act, what prompted her to attempt to take his life when only the afternoon of the same day they had been kissing each other and doing other thinking which only lovers would do, and he answered he could not explain why. x x x

"As a matter of fact, the accused claims that even long before October 25, 1975 when the complainant was still studying in Manila, he was already dating her, bringing her to eating places and the movies where they used to kiss each other. Only three (3) days before October 25, 1975, the accused testified that he and the complainant met in a restaurant in Binalonan and he treated her with 'pancit' and soft drinks. What then could have suddenly changed the mind of the complainant to attempt to take the life of the accused whom she considered her sweetheart? To this question, the accused has not made any satisfactory explanation as may be gleaned from

the above-quoted transcript of his testimony. There was nothing except the sole testimony of the accused himself to show that an intimate relationship indeed existed between him and the complainant. On the other hand, the complainant vehemently denied all these claims of the accused relative to the existence of any intimate relationship between them..

"The accused could not show any evidence to prove that he had intimate relation with the complainant. His claim that he inserted his middle finger inside the vagina of the complainant deserves scant consideration. Aside from the fact that he could not explain why the complainant wanted to kill him that night if it were true that in the afternoon they had been kissing each other and he even inserted his finger inside her vagina, the complainant on rebuttal denied this claim of the accused and branded it as a brazen lie stating she was not yet out of her mind to consent to such foolish acts."[4]

In contrast, we find that SEVERINA's disclosures have met the exacting test for culpability, premised on the following considerations: (1) that carnal knowledge of her was consummated with force and violence is supported by the Medico-Legal Certificate (Exhibit "B") reading:

"TO WHOM IT MAY CONCERN:

This is to certify that SEVERINA VALDEZ, 24 years old, male/female/single/married/widowed/Filipino citizen and a resident of Bued, Binalonan, Pangasinan has been attended to in this hospital on October 26, 1975 for a case of:

Diagnosis:

-Physical Examination

-External Findings

- a. presence of abrasions on both breast.
- b. positive for contusion on the anterior abdominal wall.

-Internal Examination Findings

- a. presence of fresh laceration of the Hymen at 3 & 4 o'clock.

-Laboratory Examination

- Vaginal Smear

negative for sperm cells."[5]

The presence of abrasions on both breasts and contusion on the anterior abdominal wall confirms SEVERINA's testimony that she was boxed on the abdomen and that ROBERTO had mashed and scratched her breast and nipples.[6] This is further corroborated by Dr. Rodolfo Parayno's declaration that the abrasions could have been caused by fingernails like the ones inflicted when the breast is being mashed up, and the abdominal contusion could have been caused by a blunt object like a closed fist applied with sufficient force.[7]

The fresh laceration of the hymen further confirms the carnal assault. As testified to by Dr. Parayno, the laceration could have been caused by sexual intercourse occurring within 24 hours.[8] It is to be recalled that the physical examination was conducted in the morning of the next day after the incident.[9]

ROBERTO contests SEVERINA's testimony in that although she testified that she was pushed to the floor, that her back hit it hard[10] and that ROBERTO had dealt karate blows on her thighs, the same are not reflected in the medico-legal certificate. Of note, however, is the fact that SEVERINA was in a kneeling position when pushed to the floor, or was just in the act of standing up[11] so that the distance and impact could not have been so great as

to produce external signs. Also the force of the karate blows would not have been as severe as those from the fist blows because at the time the karate blows were made her resistance had already been lessened.

The negative finding for sperm cells neither disproves the commission of the crime, it being basic that such is not indispensable to prove the offense of Rape.[12]

The absence of blood stains and "sticky substance" in SEVERINA's panty, exhibited in evidence (Exhibit "H"), would neither negative carnal intercourse since an interval of time passed before she was able to put it on again after she was ravished, besides the consideration that their presence is not a determinative factor in the commission of Rape.

(2) SEVERINA did not hesitate to confide the incident to her sister, Narcisa, upon the latter's arrival at 6:30 in the evening of the same day of the occurrence, notwithstanding ROBERTO's threats to their lives. All the sisters could do was just cry, and being cautious and circumspect, they merely resolved to report the matter to the authorities without ROBERTO's knowledge as soon as they could do so with safety (Exhibit "D").[13]

Furthermore, after ROBERTO had attempted to rape her at around midnight of the same day, SEVERINA ran out of the house and reported the afternoon and evening incidents to the Barrio Councilman, Lino Valdez. The fact that the latter was not presented as a witness should not diminish the persuasive character of her testimony. For, significantly enough, she was followed by Narcisa bringing along her children, Narcisa having been "awakened by sound emanating from something like a body thrown on the floor and when I opened my eyes, I saw both my husband and my sister grappling for a bolo" (Exhibit "D"). Narcisa even accompanied her sister to the police station and to the hospital. SEVERINA also lost no time in filing her Complaint (Exhibits "A" and "A-1") [14] and in submitting herself to medical examination, all on the next day.

Outraged, Narcisa and her children never returned to the conjugal home. In fact, ROBERTO testified that even during the trial whenever he tried to approach his wife, she went away and they had not talked.[15] Narcisa even executed a written statement before the police against her husband (Exhibit "D"), and during the latter's confinement at the hospital, neither she nor her children visited him.[16] It is most unnatural, indeed, for a wife not to testify in favor of her husband and contradict the complainant's story, if said version were false, knowing fully well that her husband may be imprisoned for life, unless she, too, were convinced of his guilt.[17]

(3) The Medico-Legal Certificate (Exhibit "2") presented in evidence by ROBERTO showing that he had suffered a "non-penetrating stab wound on the left chest" and a "superficial laceration on the left palm" confirms SEVERINA's testimony that she had thrust the bolo at ROBERTO's chest when the latter attempted to abuse her again late in the evening.

ROBERTO maintains that he was lying down asleep when he was stabbed and that he did not see the attacker because it was dark. He implies a conspiracy between the two sisters to harm him because when he woke up they and his children were no longer there, adding that he took no positive action against SEVERINA because it would affect his wife and no one would take care of the children. A lame excuse, indeed. Narcisa had opted just to leave the conjugal home instead of directly confronting her husband who had wronged not only her sister but also herself by his lustful deeds, and specially because of his threats to do them harm. It was the natural reaction of a wife confronted by her husband's infidelity to her and against her own kin.

The fact that SEVERINA also slept in the same room as ROBERTO, his wife and children, notwithstanding the afternoon assault on her honor, is neither incredible. SEVERINA felt that she was safe sleeping on the floor between the two children at the head of the bed where her sister and ROBERTO were sleeping. But, obviously, those factors did not deter ROBERTO's beastlike instincts.

ROBERTO's additional contentions that the motive for the filing of the rape charge and the stabbing was the fear engendered in SEVERINA's mind that the children could have seen her in a compromising situation with him and would report her to their mother; that there could have been no rape since the children did not notice anything unusual despite SEVERINA's claim that she fell to the floor causing a loud noise and that she shouted, all fall flat on their face. His daughters referred to, were ages four and three and were of insufficient discernment. Besides, ROBERTO himself declared that as soon as he heard the children going up, he moved away from SEVERINA, and allegedly, so did the latter.[18] As the Trial Court had observed, ROBERTO had brought the children down away from the room before he had forced himself on SEVERINA.

In the light of the foregoing findings, the statements aired by defense witnesses, Saturnino Diemsen and Estelita Mauricio, neither inspire belief.

The defense also makes capital of the fact that in her direct examination SEVERINA stated that upon regaining consciousness, she pushed ROBERTO and disengaged herself[19] while on cross-examination, she said that when she regained consciousness, ROBERTO was still able to have sexual intercourse with her for about one minute before she could push him.[20] The inconsistency, if at all, is an inconsequential one. The crux of the matter is that ROBERTO had had carnal knowledge of SEVERINA against her will and the sequential difference in what happened in a matter of minutes cannot affect her credibility especially so since recalling and relating the incident at a public trial could not but have been a painful, shameful and humiliating experience as, in fact, she was in tears when testifying, and this can be evidence of credibility.[21]

WHEREFORE, the judgment appealed from is hereby affirmed except in respect of the indemnity to the offended party, which is hereby increased to P20,000.00.[22] Costs against accused-appellant Roberto R. Ocampo.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, and Paras, JJ., concur.

[1] Appellee's Brief, pp. 1-6.

[2] Appellant's Brief, pp. 11-14.

[3] People vs. Egot, 130 SCRA 134 (1984); People vs. Alcid, 135 SCRA 280 (1985).

[4] Decision, pp. 10-15; Original Record, pp. 256-261.

[5] Original Record, p. 6.

[6] T.s.n., October 22, 1976, pp. 22 & 23; t.s.n., December 3, 1976, pp. 30 & 36.

[7] T.s.n., January 21, 1977, pp. 55-56.

[8] *ibid.*, pp. 57-58.

[9] T.s.n., October 22, 1976, pp. 40-41.

[10] *ibid.*, pp. 72-73.

[11] *ibid.*, pp. 21 & 70.

[12] People vs. Baraca, 137 SCRA 148 (1985); People vs. Dadaeg, 137 SCRA 500 (1985).

[13] Original Record, p. 5.

[14] *ibid.*, p. 1.

[15] T.s.n., July 8, 1977, pp. 63 & 67

[16] *ibid.*, pp. 32-33.

[17] *People vs. Vergara*, 136 SCRA 106 (1985); *People vs. Reyes*, 137 SCRA 99 (1985).

[18] T.s.n., July 8, 1977, p. 10.

[19] T.s.n., October 22, 1976, pp. 26 - 27.

[20] T.s.n., December 3, 1976, pp. 50 - 51.

[21] *People vs. Syquioco*, 118 SCRA 413 (1982).

[22] *People vs. Germino*, 133 SCRA 827 (1984); *People vs. Asturias*, 134 SCRA 405 (1985).

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