

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAFAEL SAYLAN ALIAS PAEL, ACCUSED-APPELLANT.

G.R. No. L-36941. June 29, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is an automatic review of the decision of the defunct Court of First Instance of Misamis Oriental in Criminal Case No. 52-M which imposed the death penalty.

RAFAEL SAYLAN was accused of the crime of rape in the sworn complaint of Eutropia Agno said to have been committed as follows:

"That on or about the 23rd day of January, 1972, at more or less 7:00 o'clock in the evening, at Sitio Craser, Malinao, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to have sexual intercourse, did then and there wilfully, unlawfully and criminally with the use of a dagger, force and intimidate Eutropia Agno y Arcay, to remove her pantie and to lay down on the ground and with the use of a dagger, force and intimidation succeeded in having sexual intercourse with Eutropia Agno y Arcay, a woman of good reputation and against her will. That the commission of the foregoing offense was attended by the aggravating circumstances of: abuse of superior strength, nighttime, uninhabited place, ignominy and reiteracion." (Expediente, p. 27.)

The accused entered a plea of "not guilty" and after trial the court rendered the following judgment:

"WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of rape, penalized under Article 335 of the Revised Penal Code as amended by Republic Act No. 4111, and the commission of the offense having been attended by three aggravating without any mitigating circumstance, hereby sentences him to suffer the supreme penalty of death, to indemnify the offended party in the amount of Six Thousand Pesos (P6,000.00), and to pay the costs. In view of the fact that the offended party is a married woman, aside from the fact that she has not become pregnant as a result of the commission of the rape, the Court makes no pronouncement as to acknowledgment and support of offspring." (Id., p. 64.)

The factual version of the prosecution is summarized in the People's brief as follows:

"The complaining witness, Eutropia A. Agno, a married woman and a resident of Barrio Malinao, Gingoog City, was a classroom teacher of the Mali-nao Elementary School (pp. 2, 3, tsn., Feb. 22, 1973).

"In the afternoon of January 23, 1971, Eutropia went to the public market in Gingoog City to buy foodstuffs for her family and thereafter, she proceeded to the store of her mother to fetch her five-year old daughter Nilsonita (p. 4, tsn., Id.). On their way home, Eutropia and Nilsonita boarded a passenger jeepney and while inside the vehicle she (Eutropia) noticed that the other passengers were Rudy Gonzales, a grade I pupil of the Malinao Elementary School, the appellant, Rafael Saylan, and a couple whom she did not know (pp. 5, 6, tsn., Id.). The jeepney went only as far as Malinas citrus farm because the road to Barrio Malinao was not passable by vehicles (p. 5, tsn., Id.). It was almost 6:30 o'clock in the evening when the jeepney arrived at the Malinas citrus farm and so all the passengers alighted and had to walk all the way to Barrio Malinao which was about

three and a half kilometers away (p. 5, tsn., Id.). After walking some distance and upon reaching a junction, the couple separated from the group and took the road leading to their house while Eutropia's group took the opposite road (p. 9, tsn., Id.). The appellant, however, joined the group of Eutropia and when they reached the place where the road was plain, appellant who was then walking side by side with Eutropia suddenly pulled out a dagger about eight inches long and pointing it at the latter said, 'Do not shout, Nang, I will kill you!' (pp. 11, 12, tsn., Id.). At this juncture, appellant placed his right arm around the neck of Eutropia with the dagger pointed at her left breast (p. 12, tsn., Id.), after which he dragged Eutropia at some distance. When they reached the junction of the trail for men and a trail for carabaos, he ordered everybody to stop and told the children (Nilsonita and Rudy Gonzales) to stay behind and threatened to kill them if they persisted in following them (pp. 17, 18, tsn., Id.). Thereafter, appellant again dragged Eutropia by her hand and brought her towards a creek near a coconut tree which was about five meters away from where Nilsonita and Rudy Gonzales were (pp. 14, 15, 16, tsn., Id.). The appellant then ordered Eutropia to remove her panty which she refused at first, but appellant threatened to kill her, so she removed her panty after which appellant ordered her to lie down (pp. 18, 19, tsn., Id.). Subsequently, appellant placed himself on top of the victim and inserted his penis into her vagina and succeeded in having sexual intercourse with her by moving his buttocks up and down (pp. 20, 21, tsn., Id.).

"After the first sexual act, appellant ordered Eutropia to stand up which the latter helplessly and grudgingly followed (p. 23, tsn., Id.). Appellant again inserted his penis into her vagina and then performed a push and pull movement (pp. 23, 24, 25, tsn., Id.). Not satisfied with the second intercourse, appellant ordered Eutropia to lie down again preparatory to a third intercourse (p. 26, tsn., Id.). Appellant again performed the sexual act with her (pp. 26, 27, tsn., Id.).

"After the third intercourse, appellant ordered Eutropia to stand up and then he bent her body downwards with her hands and knees resting on the ground (p. 28, tsn., Id.). When the latter was already in this position, appellant then placed himself behind her, inserted his penis into her vagina and executed a push and pull movement in the dog's way of sexual intercourse (pp. 27, 28, tsn., Id.).

"After performing this uncommon way of sexual intercourse, appellant ordered Eutropia to lie down again which the latter reluctantly obeyed because appellant's dagger was always pointed at her and thereafter he had carnal knowledge of her for the fifth time (pp. 29, 30, tsn., Id.).

"After the fifth intercourse, and after satisfying his sexual lust, appellant asked Eutropia if she will tell her husband what he did to her and the latter answered, 'I will not tell' (p., 31, tsn., Id.). But she only said this so that appellant would let her go home (p. 33, tsn., Id.).

"Afterwards, Eutropia and appellant returned to the place where the children were left and upon arriving thereat, they found Nilsonita (Eutropia's daughter) asleep with Rudy seated dozing beside her (pp. 32, 33, tsn., Id.). Nilsonita who was sleeping was carried by the appellant and then they all proceeded to Malinao (pp. 33, 34, tsn., Id.).

"After walking some distance, Eutropia saw the house of her friend "Ben" and upon approaching the said house, she shouted, 'Ben, Ben, please give me hot water' (p. 34, tsn., Id.). Upon hearing her voice, Ben, who was still awake at the time, opened the door of his house and allowed Eutropia to come up (p. 34, tsn., Id.). Eutropia immediately went upstairs and went straight to the room of Ben as she was feeling very bad (p. 34, tsn., Id.). Appellant, who was then carrying Nilsonita, and Rudy Gonzales, were also allowed to go upstairs (p. 35, tsn., Id.). Meanwhile, Eutropia requested Ben to fetch her husband (p. 35, tsn., Id.).

"When Eutropia woke up between 9:00 and 10:00 o'clock that evening, her husband was already there (p. 36, tsn., Id.). She then asked him whether the appellant was still around, and in reply, he told her that appellant had already left (p. 37, tsn., Id.). Eutropia then told her husband that she was raped by the appellant (p. 37, tsn., Id.). Upon learning of the dastardly act committed by the appellant, he advised his wife to submit herself to a medical examination (p. 37, tsn., Id.).

"The following morning, the offended party was brought to the office of the City Health Department of Gingoog City where she was examined by Dr. Ireneo O. Pascual, who after conducting a thorough physical examination, issued a medical certificate with the following findings, to wit:

'(1) Multiparous.

'(2) Presence of viscid whitish secretions at vaginal fornix.

'(3) Microscopic examination of secretions reveals epithelial cells, but no spermatozoa identified.'

(pp. 10, 11, 12, t.s.n., Feb. 24, 1973; Exh. "A").

"Rudy Gonzales, a grade I pupil of the Malinao Elementary School and one of the witnesses for the prosecution, testified that he met Mrs. Eutopia Agno in the afternoon of January 23, 1972 at the public market of Gingoog City buying foodstuffs for her family (pp. 2, 3, tsn., Feb. 26, 1973). On their way back to Barrio Malinao, they boarded a passenger jeepney and while he was inside the vehicle, he noticed that the other passengers aside from Mrs. Agno, her daughter, and himself were the appellant and a couple whose names he did not know (p. 4, tsn., Id.). The jeepney, however, could only travel up to the Malinas Citrus farm and so they had to walk all the way to Barrio Malinao (p. 4, tsn., Id.) After walking some distance and upon reaching a trail for carabaos, the appellant suddenly pulled a dagger and placed his arms around the neck of Mrs. Agno and then dragged her towards the carabao trail (pp. 4, 5, tsn., Id.). Meanwhile, he and Nilsonita were left behind and they fell asleep because it took a long time for the appellant and Mrs. Agno to come back for them (p. 5, tsn., Id.). When Mrs. Agno and the appellant returned, he was already awake while Nilsonita was still asleep and so appellant had to carry her in going home to Malinao (p. 6, tsn., Id.). After walking some distance, Mrs. Agno saw the house of Mang Ben and because she was feeling bad, they all went to the house of Mang Ben where Mrs. Agno spent the night (p. 7, tsn., Id.). Afterwards, he and the appellant left the house of Mang Ben and then they proceeded to his house at Malinao where both of them slept (pp. 7, 21, tsn., Id.)." (At pp. 2-8.)

The accused did not deny having had sexual Intercourse with Mrs. Agno; in fact he admitted that he copulated with her for three successive times in the early evening of January 23, 1972, but he claimed that it was with her consent. Accordingly, he now claims that:

"I. THE COURT A QUO ERRED IN FINDING THAT THE SEXUAL INTERCOURSE HAD BEEN COMMITTED AGAINST THE WILL AND CONSENT OF THE COMPLAINANT.

"II. THE COURT A QUO ERRED IN FINDING THAT AGGRAVATING CIRCUMSTANCES HAD ACCOMPANIED THE COMMISSION OF THE OFFENSE." (Brief, p. 5.)

The appeal must fail for the reasons stated hereunder.

This is a typical rape case. Only the participants could directly testify on the alleged sexual abuse and the accused alleges consent on the part of the complainant. The question of credibility arises and under the circumstances We have to rely heavily on the determination made by the trial judge who observed the demeanor of the witnesses while before Us is only the cold transcript of what they said.

We accept the conclusions and findings of fact of the trial court that the complainant was in fact raped by the appellant. There is no fact or circumstance in the record which will justify a different action.

The claim of the appellant that the sexual intercourse was mutually agreed is utterly incredible. If it were true that Mrs. Agno consented to have coitus with the appellant, her conduct thereafter defies understanding because it is contrary to reason and it has not been shown that Mrs. Agno, a school teacher, was bereft of common sense. For if it was true that the sexual act was indeed mutually desired and performed why did she complain not only to her

husband but also to the authorities? An affair such as that claimed by the appellant is carried out in a discreet manner. On the other hand, the version of the complainant has indicia of credibility. For her version bared her shame to a small community and her exposure was necessary only because she had to reveal the truth. No, We simply cannot believe the appellant's version.

We have said above that the findings and conclusions of the trial court are entitled to great respect. In finding the appellant guilty, this is what the court *quo* said in part:

"The testimony of the accused is incredible. When he told his love to the offended party for the first time, they were only two in the latter's house. He had more time with her then. She refused him because she is married. He tried for the second time. He was again refused because she is married. It is unthinkable and highly improbable that on the evening of January 23, 1972, after only three minutes, the offended party would rush to accept his love and go to the extent of thanking him for his considering her daughter as his own, unless she was coerced, threatened, forced and intimidated.

"It is highly improbable for a school teacher with several children to exchange her husband only 40 years old and with a good means of livelihood for one whom she does not know and whom she has observed as doing nothing except to play basketball. It is subversive of the traits, character and nature of Filipino women to say that the offended party, a school teacher and a girl scout accepted the love of a man who is good for nothing and surrendered her whole body and virtue to him after an accidental courtship of only three minutes. The offended party is an unsophisticated and conservative woman, fixing her hair the old fashion way. She does not apply make-up on her face, and her dress is up to her knees. This makes the pretensions of the accused all the more incredible." (Expediente, p. 59.)

The complaint alleges the following aggravating circumstances: abuse of superior strength, nocturnity, desoblado, ignominy, and reiteracion.

The trial court disregarded superiority because it "is inherent in the crime of rape or is absorbed in the element of force." It also did not consider nocturnity "there being no evidence that the accused purposely sought it to facilitate the commission of this rape." (Id., p. 63.)

Desoblado was present according to the trial court because: "The accused dragged the offended party, at the point of a dagger, to the carabao trail, about 10 meters from the junction, but 40 to 50 meters below to better attain his purpose without interference, and to better secure himself from detection and punishment (U.S. vs. Vitug, 17 Phil. 1). Even the junction where the two children were left is already 400 meters from the nearest house. While there maybe occasional passersby, this does not destroy its being an uninhabited place. (People vs. Bangug, 52 Phil. 87)." (Id., p. 62.) We hold that the trial court for the reasons stated correctly held that the crime was committed in an uninhabited place.

The trial court held that there was ignominy because the appellant used not only the missionary position, i.e. male superior, female inferior, but also "The same position as dogs do" i.e., entry from behind. The appellant claims there was no ignominy because "The studies of many experts in the matter have shown that this 'position' is not novel and has repeatedly and often been resorted to by couples in the act of copulation." (Brief, p. 24.) This may well be if the sexual act is performed by consenting partners but not otherwise.

The trial court also held that "there is no reiteracion because one of the offenses, namely Robbery in Band, for which the accused has been penalized, was committed after the commission of this rape case, and the penalty imposed on the other offense of Frustrated Homicide, is lighter than the penalty for rape." (Id., p. 63.)

Although not alleged in the complaint, the trial court stated that the offense was aggravated by disregard of rank because it was a fact known to the appellant that Mrs. Agno was a school teacher. The appellant claims that this

circumstance cannot be assigned to him because there was no deliberate intent to offend or insult the rank of Mrs. Agno. The Solicitor General agrees with the appellant for the same reason.

The judgment of the trial court is in accordance with the facts and the law but it cannot be affirmed completely because of the lack of the necessary number of votes.

WHEREFORE, the judgment under review is modified in the sense that the appellant shall suffer the penalty of reclusion perpetua instead of death and the indemnity to be paid to the offended party is increased to P20,000.00. Costs against the appellant. SO ORDERED.

Fernando, C.J., Makasiar, Aquino, Concepcion, Jr., Guerrero, Plana, Escolin, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Teehankee, J., no part.

Melencio-Herrera, J., on official leave.

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