

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGACIANO TADUYO, DEFENDANT-APPELLANT.

G.R. Nos. L-37928-29. September 29, 1987

Ponente: FELICIANO, J.

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FELICIANO, J.:

This case traces its origins to events which transpired on the afternoon of 6 February 1973 at the residence of complainant Margarita Mahayag, situated in Barrio Carayman, Calbayog City, Samar. As an outcome of such events, two separate criminal informations were filed in April 1973 against defendant-appellant Rogaciano Taduyo with Branch 5 of the then Court of First Instance of Samar:

A. Criminal Case No. 425 - charged the accused with frustrated homicide:

"That on or about the 6th day of February 1973, in the afternoon, in Bo. Carayman, Calbayog City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and armed with a sharp-pointed weapon, did then and there wilfully, unlawfully and feloniously attack, assault and stab with said weapon one Margarita Mahayag, who, as a result thereof, sustained wound on her body, which would have produced the crime of homicide as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the able medical attendance rendered which prevented the death of said Margarita Mahayag.

Contrary to law.

B. Criminal Case No. 426 - charged the accused with attempted rape, later amended to consummated rape. The complaint of the offended party read:

"That on or about the 6th day of February 1973, in the afternoon, in Bo. Carayman, Calbayog City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused actuated by lust, and with the use of deadly weapon, namely a sharp-pointed instrument, and by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of undersigned complainant, against the latter's will.

Contrary to law."

At arraignment, the accused, aided by counsel, entered a plea of "not guilty" to both charges against him. Since the offenses charged in Criminal Case No. 425 and Criminal Case No. 426 were very closely related to each other in point of time and circumstance, and with the consent of the parties involved, the two cases were tried jointly.

After trial, the court a quo found Rogaciano Taduyo guilty of frustrated homicide and consummated rape. The dispositive portions of the decision read:

Criminal Case No. 425

"PREMISES considered, the Court finds the accused ROGACIANO TADUYO guilty beyond reasonable doubt of the crime of frustrated homicide a charged in the information and applying the Indeterminate

Sentence Law, hereby sentences the aforementioned accused to suffer an imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY, prision correccional as minimum to EIGHT (8) YEARS and ONE (1) DAY prision mayor as the maximum; to pay the costs of the proceedings; to pay Margarita Mahayag the sum of P3,000.00 as exemplary and moral damages and to suffer such other accessory penalties of the law. He shall be credited in full with the total period of his detention in correction with the case if he agrees to abide by the same disciplinary rules imposed upon prisoners; otherwise, he shall only be credited with 4/5 of such detention in accordance with RA 6127."

Criminal Case No. 426

'WHEREFORE, the Court finds ROGACIANO TADUYO guilty beyond reasonable doubt of the crime of RAPE defined and penalized by Article 335 (1), paragraph 2, [Revised Penal Code] with the aggravating circumstance of robbery committed on the occasion of the rape with no mitigating circumstance to offset the same, and sentences the aforesaid accused to suffer the supreme penalty of DEATH; to pay the costs of the proceedings; to compensate the victim, Margarita Taduyo (sic) with the sum of Five Thousand Pesos (P5,000.00) for moral damages in accordance with Article 21 and 2219, both of the New Civil Code of the Philippines; to restitute to Margarita Mahayag the sum of P430.00 which he took from his victim. He shall likewise suffer such other accessory penalties of the law."

The defendant appealed his conviction for frustrated homicide to the Court of Appeals where the appeal was docketed as CA-G.R. No. 16022-CR. The appeal was dismissed by the Court of Appeals on 22 October 1975 since the accused himself stated in a letter-request to the Court of Appeals that he was no longer interested in pursuing his appeal and failed to submit an appellant's brief.

The judgment of conviction for rape came before this Court on automatic review.

The evidence for the prosecution consists mainly of the testimonies of the complainant Margarita Mahayag, Julieta Legaspi, Amancio Amoguis and Dr. Lazaro Cutanda, the physician who first examined Margarita after the events complained of. The facts as they emerge from such evidence, are outlined below.

Margarita Mahayag, then twenty-nine years of age, testified that she was married to Francisco Mahayag who, however, had abandoned her on 16 August 1972. She has a house situated in Barrio Carayman, Calbayog City, Samar where she lived with her two children, an eight-year old child and an infant of nine months. Near the stairway which led to the interior of her home, she maintained a small sari-sari store where she sold a limited assortment of grocery items.

At around three o'clock in the afternoon of 6 February 1973, appellant Rogaciano Taduyo came up her house and asked to buy ten-centavos' worth of Pine cigarettes. After Margarita handed over the cigarettes to Rogaciano, the latter requested a drink of water. Obliging, Margarita, followed by Rogaciano, went inside her kitchen (where her children were) and proceeded to fetch a glass of water for her thirsty customer.

As Margarita turned to face Rogaciano, she was suddenly startled to find him standing in front of her wielding a ten-inch knife. Almost immediately, Rogaciano pressed the knife's point on Margarita's stomach and demanded money. Fear-stricken, Margarita acceded and led Rogaciano into her bedroom (located some three meters away from the kitchen) when she kept her money.

Inside her bedroom, Margarita surrendered to Rogaciano P430.00 which she had kept hidden inside a wooden trunk. Thereupon, Rogaciano, with knife in hand, forced Margarita to lie on the floor face up and commanded her to undress. Margarita refused, so Rogaciano forcibly tore off her shorts and undergarments (Exhibits "A" and "A-1"). Rogaciano opened his pants, pulled out his sex organ and then lay on top of Margarita and proceeded to assault sexually his helpless and unwilling victim.

During the coerced coitus, Rogaciano thoughtlessly put down the knife he had been holding in his right hand and placed it on the floor, somewhere to the left of Margarita. Margarita reached for the knife with her left hand, grasped it and thrust the blade into the right side of Rogaciano, causing him suddenly to withdraw from above her. A struggle immediately ensued during which Rogaciano was able to regain possession of the knife. So armed, the wounded Rogaciano chased Margarita and, upon overtaking her at the main doorway to her home (about two arms' lengths from her bedroom), locked her in an embrace and stabbed her. The wounded Margarita stumbled and fell down the staircase leading from her house. She managed to escape and reach the house of Anastacia Obong (Rogaciano's cousin) some fifteen meters away. Unfortunately, she found no one there who could help her as only children were at home at the time. Margarita returned to her own house two minutes later and put on fresh clothes. Soon afterwards along the main barrio road, she chanced upon Engracia Obong who assisted her in boarding a tricycle and accompanied her to the Calbayog City General Hospital where she was confined and treated for her injuries.

Margarita did not complain to the doctors present at the hospital that she had been sexually attacked by Rogaciano. Consequently, no medical examination was carried out on her person to determine whether or not she had been raped. However, upon her discharge from the hospital 20 days later on 26 February 1973, she promptly reported the entire incident to the authorities at the Philippine Constabulary Detachment Office in Calbayog City.[1]

Julieta Legaspi testified that at around three o'clock in the afternoon of 6 February 1973, she was at the house of Margarita Mahayag to borrow money from Margarita. She knocked on the main door but received no answer from within. Seeing, however, that the door was open, Julieta entered the house and proceeded up the staircase. Once upstairs, Julieta notice Margarita's children playing in the kitchen while inside the bedroom (about six meters from where she stood) she saw Rogaciano Tadyo who was then holding a knife at the abdomen of Margarita. Julieta observed that Margarita was close to tears when the latter handed over some money to Rogaciano. She also testified that she stayed inside the house for only about a minute before departing for the barrio proper of Carayman.[2]

Amancio Amoguis testified that at around three o'clock in the afternoon of 6 February 1973, he was resting inside his house when he heard Margarita Mahayag yell "Tabag!" ("Help, a man!") twice. He immediately got up and rushed over to the house of Margarita situated just ten meters away. Like Julieta Legaspi, Amancio was able to enter Margarita's house because the main door was left open. Inside, he saw Margarita being chased, embraced and then stabbed once in the right side of her abdomen by Rogaciano Tadyo. Amancio also observed that Rogaciano was already wounded on his right side when the latter stabbed Margarita. He backed off and returned to his house because Rogaciano had threatened to kill him if he ventured any closer. Minutes later, he saw Margarita run towards the house of Anastacia Obong; he did not, however, see where Rogaciano went.[3]

Dr. Lazaro Cutanda, then a junior resident physician at the Calbayog City General Hospital, testified that he examined Margarita Mahayag inside the emergency room of the hospital on the afternoon of 6 February 1973 when she was brought in for surgery. He prepared a Physical Injuries Report at 3:20 p.m. that same afternoon describing the extent of Margarita's injuries.[4]

"Penerating wound right lumbar area.

Wound 1 inch at the inferior border of the

right lobe of the liver."

Dr. Cutanda opined that if Margarita's assailant were left-handed, then Margarita must have been frontally assaulted; and if her assailant were right-handed, then she was stabbed from behind. Dr. Cutanda, referring to

Margarita's wound, categorically stated that "(i)f the patient was not operated [upon], she will die." [5]

The defense of Rogaciano Tadyo consisted generally of denying that he had raped Margarita with whom, he claimed, he had been living as husband and wife at the time the events complained of took place and for sometime before. [6] Essentially, Rogaciano's defense was that he could not have raped Margarita, for he had no need to rape her. He painted a picture of Margarita as a woman of highly developed sexuality, who was accustomed to multiple intercourse with him and who found him irresistible because he was well-endowed physically. He claimed he had been meeting Margarita clandestinely even before her husband had abandoned her. [7] His more specific defense consisted of the claim that Margarita, far from being a victim, was the aggressor during the events which took place in her house in the afternoon of 6 February 1973.

Rogaciano's version of those events was basically the following: In the afternoon of 6 February 1973, Rogaciano saw Margarita, Anastacia Obong (Rogaciano's cousin), Irene Mahayag, and a fourth woman unknown to him, all drinking tuba in front of Margarita's store. He approached the group upon Anastacia's invitation but Margarita suddenly hurled a bowl at him, hitting him on the forehead. Perplexed but unangered, he disregarded this unexpected act of hostility and went home. Later in the same afternoon, Rogaciano returned to Margarita's store to buy cigarettes for his elder brother Tarcilo. He went upstairs upon Margarita's invitation. Inside, he asked her why she had thrown a bowl at him earlier. According to Rogaciano, Margarita retorted that she resented his belittling her. She then threatened him saying "papatayun ta ikao" and, with that warning, suddenly thrust a knife into his right side. Margarita attempted to stab a second time but, Rogaciano said, he grasped her knife and twisted it around and pushed the knife towards her own body and wounded her in the abdomen. All he remembered after that, he testified, was that Margarita ran away, as a few moments later he fell unconscious along the stairway of the house. [8]

Rogaciano was taken by his bother Tarcilo to the Calbayog City General Hospital where he was treated for his injuries and he was confined for ten (10) days. Upon his discharge therefrom on 16 February 1976, he surrendered himself to the Constabulary authorities stationed in Calbayog City. [9]

Rogaciano sought to explain the sudden knife attack by Margarita by testifying that two (2) days before the incident, Margarita had seen him offer a bottle of softdrink to another woman in the Barrio, one Tita Achos, in the neighborhood store. Margarita, he further suggested, was also disturbed by news of her estranged husband returning from Manila. [10]

The defense presented two (2) witnesses to corroborate Rogaciano's claim that he and Margarita were common-law husband and wife. The first witness, Demetrio Bongo, in effect testified that he was a voyeur, that he had one evening in May 1972, climbed the house of Margarita and peeped through the wall of her bedroom and for half an hour watched Rogaciano and Margarita sprawled on the floor, locked in coitus. [11] A second witness, Alfonso Antor, a compadre and business ("buy and sell") associate of the accused Rogaciano Tadyo, testified that he passed by every morning at 5:00 o'clock for Rogaciano at the house of Margarita on his way to work and that Rogaciano had informed him that he was living with Margarita. [12]

Clearly, the resolution of the present appeal must turn on the issue of credibility of the witnesses on each side. Only Margarita herself testified that the accused had indeed raped her. But this is by means unusual. Indeed, in a prosecution for rape, more often than not, only the offended party can testify as to the act of coerced copulation. Accordingly, the Court has held that conviction of rape may ensue on the sole basis of the complainant's testimony where such testimony is found to be positive and credible. [13]

The trial court explicitly assayed the credibility of the testimony respectively presented by complainant and by the accused. The trial Judge clearly was not moved or convinced by the story presented by the accused and his

witnesses. Indeed, the lurid character of that defense story and the ocular examination by the court of the physical endowment Rogaciano had boasted about,[14] convinced the court he was merely spinning a tale. Upon the other hand, the Judge accorded the testimony of Margarita full weight. The trial Judge said:

"The court in appreciating the totality of the evidence laid before it, finds that the prosecution evidence should be accorded more faith and credence than that of the defense because it is founded upon the common experience of man. More than that from the stand the court noted that the complaining witness narrated her harrowing experience in a manner that left no doubt as to her sincerity and candor. Upon the other hand the story of the defense is like one copied from books on pornography or from the pornographic "bomba komiks" that saturated the country during the days before martial law. The narration by the accused as to how he undressed Margarita before the supposed sexual acts he had with her and how Margarita wiped his genital organ with her panty after every copulative act, looks fiction(al)ized or at the least invented. x x x

xxx xxx xxx

With respect to Margarita's version as to how she was abused by Rogaciano Tadyo, there is no corroboration. But that fact alone has not weakened the case of the people. When Margarita was on the stand she did not show any trace of hesitancy as she described how the fear of the knife poked at her by Rogaciano made her lie down on the floor and offered no resistance when the accused inserted his penis into her vagina. She was candid in her answers to questions propounded to her. There was no indicia of artificiality in her manner of testifying which are easily detected in a witness who has a fabricated story. x x x"[15]

Necessarily, the findings of fact of the trial Judge must be accorded great weight by an appellate tribunal[16] for the latter can only read in cold print the testimony of the witnesses which commonly is translated from the local dialect into English. In the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the written, translated words.

The accused stressed the fact that Margarita did not tell any one in Calbayog City General Hospital that she had been raped. This fact, however, does not appear to us to be critical. Margarita was unconscious when she arrived in the hospital that afternoon of 6 February 1973, and was rushed to the operating room for emergency laparotomy surgery.[17] It is common knowledge that post-operative stupor may take time to clear up. Such factors, coupled with the severe shock complainant must have experienced, would account for her failure to tell her story to the hospital doctors during her confinement. What is important is that she reported the whole incident -- the rape and the stabbing -- to the Constabulary authorities as soon as she left the hospital on 26 February 1973. This is consistent with her explanation[18] that her temporary silence at the hospital was due merely to her belief that the criminal charge of rape was appropriately lodged with the police authorities rather than with the hospital officials.

The accused also claimed that the criminal charge for rape was instituted against him by Margarita basically to justify Margarita's act of stabbing him and to counteract the charge of frustrated murder which Rogaciano had supposedly filed against Margarita with the City Fiscal of Calbayog City.[19] The accused, however, completely failed to show that he had indeed filed a criminal complaint against Margarita.

The testimony of Rogaciano and his witnesses failed to convince the trial court; this Court has neither reason nor inclination to overthrow the findings of the trial courts. The bowl-throwing incident which allegedly took place in front of Margarita's store was not proven by evidence other than the accused's bare assertion. The defense could have easily presented the accused's own cousin, Anastacia Obong, who was supposed to have been present at that incident to testify on it on behalf of the accused; but the defense did not do so. In any case, that story of Rogaciano is not only uncorroborated but also, to our mind, improbable and inadequate to explain the supposed murderous attack by Margarita upon Rogaciano.

The testimony of the voyeur Demetrio Bongo must have appeared contrived and prurient to the trial Judge. We note that Rogaciano's claim that he and Margarita had been living together as common-law husband and wife, a relationship not easily kept secret in a small rural community like Carayman, could have been easily established by unrelated, competent and credible witnesses, e.g., by barrio people living in the immediate vicinity of Margarita's house or the accused's own relatives. The defense, however, failed to present any such supporting testimony. The testimony of defense witness Alfonso Antor, which was in itself inadequate to show a common law marital relationship between the accused and the complainant, was not corroborated even by the accused himself.

There is another reason why we are compelled to reject the accused's defense that he and Margarita were common law husband and wife. One may assume *arguendo* merely, that Rogaciano and Margarita did live together as pretended husband and wife. But that by itself does not prove that Rogaciano could not have raped Margarita, that Margarita would never have denied Rogaciano sexual access. Certainly, no presumption arises that a common law wife will, or is willing to, submit to the common law husband's embraces always and under all circumstances. Proof of a prior history of a common law marital relationship will not prevail over clear and positive evidence of copulation by the use of force or intimidation. In *People vs. Blance*,^[20] Mr. Justice Johnson explained:

"Admitting that the appellant had been having illicit relations with the offended party for months before the time and place mentioned in the complaint, yet, nevertheless, that fact would not constitute a defense, providing the illicit relations, which are described in the complaint, took place by force and violence and against the will of the offended party."

"The fact that Maria Bernales may have been an unchaste character constitutes no defense of the charge of rape, providing it is proved that the illicit relations described in the complaint were committed with force and violence. The appellant is equally guilty, under the law, if force and violence were used, regardless of the good or bad morals of Maria Bernales."^[21] (Underscoring supplied.)

To our mind, the stab wound inflicted by Margarita upon Rogaciano, and that sustained by Margarita herself from Rogaciano, are sufficient proof that she did not consent indeed objected vehemently to Rogaciano's embraces that afternoon of 6 February 1973.

We conclude that the trial court correctly held that the guilt of the accused was established beyond reasonable doubt.

We turn now to the robbery that the trial court found to have been committed by the accused. That robbery was, however, neither alleged in one or the other of the two (2) informations filed against Rogaciano, nor charged in a third separate information. In any case, robbery can scarcely be regarded as a generic aggravating circumstance in the crime of rape and the trial Judge was in error in so considering it in the instant case. We have taken note of the fact that the accused immediately surrendered himself to the Constabulary authorities upon his discharge from the hospital on 16 February 1973. Until that point, no formal charges had been filed against him by complainant who was still in the hospital recovering from her injuries. The informations for homicide and rape were in fact filed only on 26 February 1973, i.e., ten (10) days after the accused had given himself up. Furthermore, it appears that the warrant for his arrest was never issued. Under the circumstances, therefore, it may reasonably be inferred that the accused's surrender to the authorities was spontaneous and voluntary and not one forced upon him by extraneous circumstances.

WHEREFORE, the appealed judgment, insofar as it relates to the conviction of the accused-appellant of the crime of rape, is **AFFIRMED** with the modification that the death penalty imposed by the trial court is hereby reduced to reclusion perpetua in view of the presence of the mitigating circumstance of voluntary surrender^[22] which offsets

the aggravating circumstance of use of a deadly weapon[23], and in accordance with Article III, Sec. 19 (1) of the 1987 Constitution abolishing the death penalty.

SO ORDERED.

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

- [1] Original TSN, pp. 85-103, 5 June 1973.
- [2] Id., pp. 3-18, 25 June 1973.
- [3] Id., pp. 26-45, 26 June 1973.
- [4] Original Records, p. 62.
- [5] Original TSN, pp. 70-76, 11 July 1973.
- [6] Id., p. 149, 23 August 1973.
- [7] Id., pp. 151 and 174.
- [8] Id., pp. 166 and 170.
- [9] Id., p. 167.
- [10] Id., pp. 164-165.
- [11] Id., pp. 190, 192 and 199, 16 October 1973.
- [12] Id., pp. 204-206.
- [13] *People vs. Monteverde*, 142 SCRA 668 [1986].
- [14] Original TSN, p. 176, 23 August 1973. See also Decision, pp. 15-16.
- [15] Decision, pp. 14-16.
- [16] *People vs. Eguac*, 80 SCRA 665 [1977].
- [17] Original TSN, pp. 113-114, 5 June 1973. See also Decision, p. 12.
- [18] Id., pp. 114-115. See also Brief for the Appellee, p. 17.
- [19] Brief for Defendant-Appellant, p. 13. See also Original TSN, pp. 168-169, 23 August 1973.
- [20] 45 Phil. 113 [1923].
- [21] 45 Phil. at 116.
- [22] Article 13 (7), Revised Penal Code.
- [23] Article 335, 3rd paragraph, Revised Penal Code.

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