

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMUEL PIMENTEL, ALIAS “SAMUEL PACANAN”; ALIAS “SAMUEL PACUL”; DEFENDANT-APPELLANT.

G.R. No. L-38423. November 25, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Appeal from the judgment of the Court of First Instance of Misamis Oriental imposing upon appellant Samuel Pimentel the penalty of reclusion perpetua for the crime of rape.

This case calls to mind the oft-repeated aphorism: "While rape is a detestable crime, it must be remembered that it is an accusation easy to be made, hard to be proved, but harder to be defended by the party accused though innocent." [1] For appellant, no wiser words could apply, for his conviction was predicated primarily on the lone and uncorroborated testimony of the complain-ing witness.

Appellant was a jeepney operator-driver, while his accuser was his sister-in-law, Lina Sabejon, an unmarried public school teacher and younger sister of his wife. At the time of the alleged rape, appellant, his wife and their child, as well as complainant and her mother Gertrudes Sabejon were living under the same roof at Aplaya, Jasaan, Misamis Oriental.

At the trial, appellant admitted having sexual in-tercourse with Lina in the night of September 27, 1969. He claimed, however, that the act was consummated with the full consent and at the urgings of the complainant herself.

His version of the incident is as follows: At about 6:00 in the afternoon of September 27, 1969, appel-lant left Cagayan for Jasaan in his passenger jeepney. Upon reaching Jasaan an hour later, he proceeded to sitio Bobuntugan where, in accordance with a previous agreement with Lina, he fetched the latter from the house of Ernesto Llausas, also a brother-in-law of Lina. The complainant seated herself beside the appellant who was at the wheel, while several passengers occupied the back seats. From Bobuntugan, appellant drove the jeepney towards Aplaya passing thru the town of Jasaan, where the paying passengers alighted. On the way to Aplaya, somewhere in sitio Kota, appellant told Lina that he was going back to Jasaan to pick up the engine oil which he had forgotten. When he suggested that she wait for him in a house in sitio Kota, she expressed preference to go to Jasaan with him because she wanted to practice her driving. She then moved closer to the appellant and held the steering wheel, while the appellant con-trolled the accelerator. At this juncture, she placed her left thigh on the appellant's right thigh. She held the steering wheel until they reached Kimaya bridge, where appellant took over. Upon reaching Jasaan, he picked up the 3 cans of engine oil from the "Flying A Station."

From Jasaan, Lina once again took over the wheel and drove past the Jasaan Catholic Cemetery. There, appellant stopped the engine and started to embrace and kiss her. The latter reciprocated. At Lina's sug-gestion, they transferred to the back seat where they continued kissing each other. Finally, appellant asked her "to go all the way," i.e., to perform the sexual act. When Lina nodded her assent, he asked her to remove her panty, which she

did. After consummating the sexual act, appellant drove towards Aplaya. On the way, Lina asked him tauntingly, "Where is the pro-mise that you will thrill and satisfy me?" His reply was that the jeepney was not a good place to do it.

Appellant further declared that he had had pre-vious sexual intercourse with Lina: the first, on August 3, 1969 in his room at about 5:30 in the morn-ing while his wife was brewing coffee downstairs; and the second, on September 5, 1969, at the same time and in the same place.

The above testimony of the appellant was found by the trial court to be "implausible, exaggerated and in-herently impossible"[2] as compared to the version of the complaining witness, to wit:

After they returned to Jasaan from sitio Kota to get the 3 cans of engine oil, appellant told her that he had to pick up passengers for Iligan City at the Jasaan Catholic Cemetery. At some distance from the cemetery, appellant stopped the jeepney, alighted therefrom and shouted "you hurry up", words ostensibly directed to some persons. When nobody came, appellant returned to the jeepney and reached for his revolver at the back of the driver's seat. Pointing it at the com-plainant, appellant told her not to move or shout, otherwise he would kill her. Appellant then went to the right side of the vehicle and lifted complainant to the back seat. She was too terrified to shout or fight back.

At this juncture, appellant asked her to sit on his lap. In this position, he wrapped his right arm around her, pressing down her arms and abdomen, then flexed his legs around her legs, thus totally immobi-lizing her. Pulling up her dress, he slipped her panty and pantilet down to her knees. Then, slightly lifting her, he unzipped his trousers and pulled out his penis. Feeling the appellant's penis on her bare buttocks, she lost consciousness.

When she regained consciousness, the jeep was al-ready in Kimaya, Jasaan. She felt very tired and dizzy and there was pain in her vagina.

When they reached home, appellant warned her not to tell anybody about the incident or he would kill everybody in the house with 32 bullets in his revolver. Mindful of this threat, complainant tried to act naturally. She kissed her mother's hand as she was wont to do, and then proceeded to her room where she prayed for divine guidance. At supper time, she joined the family to prevent arousing suspicion. Thereafter, she returned to her room and slept.

The following day, being a Sunday, she heard mass. On Monday and the succeeding days, she continued attend-ing her classes until October 8, 1969 when she went on sick leave. During all these times, she was threatened by appellant.

Troubled by the incident, she finally sought counsel from her father confessor, Fr. Mejia, on October 4, 1969. The priest advised her to go to court for her peace of mind. On October 16, 1969, she went to her uncle, Jose Zamayla, and unburdened herself. Upon her uncle's ad-vice, she went to the fiscal's office to lodge a complaint against the appellant. The complaint was filed in court on November 5, 1969.

She submitted herself to a medical examination by Dr. Sopilina Sison of the Provincial Hospital of Misamis Oriental. The medical report[3] showed the following:

"PHYSICAL EXAMINATION:

A) Externally - reveals healed lacerated wound at 6:00 o'clock position;

B) Internal Exam - admits easily one finger; hardly admits 2 fingers.

CERVICAL SMEAR - not done."

On the witness stand, Dr. Sison elaborated on her findings as follows:

"Q. In this woman what is the condition of the vaginal canal?

A. Already irregular.

Q. You also stated in the direct examination that when you inserted your middle finger it easily entered the vagina of the woman?

A. Yes, sir.

Q. And when you inserted two fingers there was a groan?

"A. Yes, sir.

Q. What was the finger inserted?

A. Right middle finger.

Q. And it hardly admit two fingers?

A. Because there was already resistance.

Q. Did I get you right Dra. Sison in this medical certificate marked Exhibit C the moderate bleeding you stated there may be coming from the menstrual period?

A. The patient alleged that she was menstruating that time.

Q. That lacerated wound at 6:00 o'clock may have been caused by foreign body?

A. It is possible.

Q. It may also be caused by the passage of clotted blood?

A. Yes, sir.

Q. It may also be caused by the falling of said woman?

A. Yes, sir, falling down.

Q. It may also be caused by masturbation?

A. That is possible also.

Q. And did I get you right that on the basis of your examination of the private part of the offended party it could have been possible that she had one or two sexual experiences?

A. Yes, sir.

Q. It could have been also 3?

A. Possible.

Q. Could it be about 4?

A. I don't think so."[4]

In its assessment of the conflicting versions adduced by the prosecution and the defense, the court a quo observed:

"x x x It is palpable that the whole case is reduced to a question of credibi-lity, and this court is persuaded, after observing the demeanor, the mode and man-ner of both the witnesses for the People and the defense

when they testified in the trial, that the witnesses for the pro-prosecution merit more credence and that the sexual intercourse committed on the eve-ning of September 27, 1969 was consummated with the use of force and intimidation by the accused, and not with the consent of the victim as he claimed. Quite apart from the fact that the complainant a high school teacher of unsullied reputation had no mo-tive to implicate the accused, husband of her own sister, in so grave a crime the pe-nalty for which is reclusion perpetua to death unless it be the truth, is the circumstance that the version of the com-plainant is more in keeping with the natural course of things and entirely devoid of evasion and any semblance of shuffling while the story of the accused is implausible, exaggerated and inherently improbable." (Decision, Rollo, pp. 8-9).

Thus, the lower court found appellant guilty be-yond reasonable doubt of the crime of rape.

In weighing the testimony of the complainant in an accusation for rape, the rule often applied by the courts is that the testimony of the victim, whose chas-tity has not been questioned, is generally accorded credence because such offended party would not have fabricated facts that could bring shame and dishonor on her. Nor would she disclose her humiliating expe-rience at a public trial, and thus give rise to gossip and slander, unless her motive was to bring to justice the person who grievously wronged her.[5]

As the records in the instant case is bereft of any evidence that complainant had any other motive than to seek redress for the violation of her honor, the lower court considered it unthinkable that complainant, a school teacher of unsullied reputation, would be willing to undergo the shame and humiliation of recounting in a public trial her horrid experience, if she was not in fact sexually abused by the appellant. Upon this pre-mise, the lower court found the account given by com-plainant more plausible than the testimony of the appellant, a mere jeepney driver.

However, during the pendency of this appeal, a new scenario entirely different from what complainant had presented at the trial has been introduced into this case. On February 5, 1982, counsel de officio for the appellant filed before this Court an "Urgent Manifesta-tion", attaching thereto the affidavit of desistance executed on January 28, 1982 by the offended party Lina Sabejon Pacamalan, which we quote in full:

"I, LINA SABEJON PACAMALAN, of legal age, married and a resident of Claveria, Misamis Oriental, after being duly sworn to law, depose and say;

"That I am the complainant in the case of People vs. Samuel Pimentel for rape, docketed as Case No. G.R. No. L-38423 now pending decision by this Honorable Court;

"That at the time of the alleged rape against me, I was still a single, thirty years old and living with the accused, who is my brother-in-law, his wife, Juanita, is my sister;

"That it is true as narrated by the accused during trial that we were secret lovers and we were having sexual inter-course in the house of the accused where I also lived for five years;

"That when my sister, who is the wife of the accused, suspected of our relationship, I became so ashamed and humiliated that I even thought of com-mitting suicide;

"That finally, upon advice of my uncle, I made up the charges of rape against my brother-in-law to cover my acts with the accused;

"That I have realized that I did wrong in fabricating this charge of rape against my brother-in-law but at that time I had to do it to save my name and honor;

"That now that I am happily married with children, I want to forget everything by executing this affidavit."

The degree of humiliation and disgrace befalling a rape victim could in no wise compare to that suffered by a

public school teacher in a small barrio found out to be maintaining illicit relations with her own brother-in-law. Ours is basically a sympathetic society; we pity rather than scorn a rape victim. On the other hand, our traditional clannishness and deep-rooted belief in the sanctity of the marital union invariably move us to regard with disgust, spite and abhorrence the so-called 'other woman', who virtually becomes a social outcast. This is particularly true when that 'other woman' happens to be a close relative of the aggrieved wife. To avoid this intolerable stigma, complainant had to devise a way out; and a tale of rape provided that expedient. That this was the case is amply demonstrated by the complainant's actuations in the night of the alleged rape as well as the ensuing days.

Complainant testified that when she arrived home after the alleged rape, she kissed her mother's hand as was her custom, went to her room to change her soiled panty and pantilet, and prayed; and that after joining the family for supper, she went to bed.

"COURT: After supper what happened next?

A: After supper I went to my room.

Q: You went to your room?

A: Yes, your honor.

Q: Then?

A: I slept."^[6]

She further declared that in the ensuing days, she attended her classes, pretending that all was well, until October 8, 1969 when she applied for a sick leave. This leave, which would have expired on November 8, 1969, was extended up to November 27, 1969.

It is noted that, while the crime was allegedly committed on September 27, 1969, it was not until November 5, 1969, or after the lapse of 39 days, that a formal complaint was lodged against the appellant. It taxes one's credulity that complainant, who claimed to have fainted at the touch of the appellant's sexual organ upon her bare buttocks, had been able, for a long period of time, to feign a composed and serene posture after the harrowing experience she had undergone. Ordinarily, a woman of her disposition would have been hysterical. The ease and facility with which the appellant was able to consummate the sexual act, made possible by the absence of any show of resistance on the part of complainant, strongly belie her pretension that she was forcibly abused.

Furthermore, the appellant's claim that the sexual act he had with complainant in the night of September 27, 1969 was not their first intimate experience, finds confirmation in the following testimony of Dr. Sofilina Sison:

"Q. And did I get it right that on the basis of your examination of private parts of the offended party it could have been possible that she had one or two sexual experiences?

A: Yes, sir.

Q: It could have been also three?

A: Possible."^[7]

It is thus a conclusion easily reached that the sexual intercourse consummated by the parties in the night of September 27, 1969 was but an episode in an illicit affair carried on by two consenting adults.

Undeniably, affidavits of desistance are generally frowned upon by our courts for they make a mockery of our judicial system. Thus, in *People versus Manigbas*^[8], where a new trial was sought on the basis of a retraction, We ruled that:

"Unless there be special circumstances, which, coupled with a retraction of the witness, really raise doubts as to the truth of the testimony given by him at trial and accepted by the trial judge, and only if such testimony is essential to the judgment of conviction, so much so that its elimination would lead the trial judge to a different conclusion, a new trial based on such retraction would not be justified. Otherwise, there would never be an end to criminal litigation."

Such special circumstances exist in the case at bar. And, as already discussed, they engender serious doubts as to the appellant's guilt. Accordingly, due consideration must be afforded the complainant's affidavit of desistance.

WHEREFORE, the judgment appealed from is hereby set aside, and the appellant acquitted of the crime charged, with costs de oficio.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

[1] Chitty's Blackstone 165, cited in U.S. vs. Flores, 26 Phil. 262; People vs. Barbo, 56 SCRA 549; and People vs. Reyes, 60 SCRA 126.

[2] Decision, p. 159, rollo.

[3] Exhibit C, Original Record, p. 104.

[4] TSN, Aug. 21, 1970, pp. 88-89.

[5] People vs. Savellano, 57 SCRA 320; People vs. Gan, 46 SCRA 667; and People vs. Ignacio, 60 SCRA 11.

[6] TSN, p. 16, Oct. 20, 1970.

[7] TSN, p. 89, Aug. 21, 1970.

[8] 109 Phil. 469.

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