

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DINDO CASTILLON AND VALERIANO CABAJES, ACCUSED-APPELLANTS.

G.R. No. 100586. January 15, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

In two complaints both duly sworn to by complainant Arlene Cabajes Devocion on February 9, 1988, accused-appellants Dindo Castillon and Valeriano Cabajes, alias Ebong, were charged with multiple rape in Criminal Cases Nos. 287 and 288 of the Regional Trial Court of Surigao City, Branch 32.

The accusatory part of the complaint in Criminal Case No. 287 reads:

"That on or about the 27th day of February 1987 at 11:00 o'clock in the evening, more or less, at the stage of Albor Municipal High School, municipality of Libjo, Surigao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant against her will and without her consent, to her damage and prejudice in the amount of P30,000.00"[1]

while that of the complaint docketed as Criminal Case No. 288 alleges:

"That on or about the 3rd day of March, 1987 at 7:00 o'clock in the evening, more or less, at the school plaza of Albor Municipal High School, in the municipality of Libjo (Albor), Surigao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse of (sic) the complainant against her will and without her consent, to her damage and prejudice in the amount of P30,000.00."[2]

Upon arraignment, appellants pleaded not guilty in both cases. The same parties being involved, a joint trial was conducted. Thereafter, the trial court in a joint judgment, dated April 8, 1991, found appellants guilty of rape in Criminal Case No. 287 and sentenced each of them to suffer the penalty of reclusion perpetua and its accessory penalties, to pay one-half of the costs, and, jointly and severally, to indemnify Arlene Cabajes Devocion in the sum of P50,000.00 as consequential damages and P5,000.00 as legal fees of the private prosecutor. For insufficiency of evidence, appellants were acquitted on reasonable doubt in Criminal Case No. 288.[3]

Their motion for reconsideration of the judgment of conviction in Criminal Case No. 287 having been denied,[4] appellants now entreat us to reverse the same, contending that the trial court erred in finding that they committed the crime of rape in the incident of February 27, 1987 and in not acquitting them of the charge therefor.[5]

Now, in almost every partisan judicial contest, and especially so in prosecutions for crimes against chastity where the adjudication of guilt or innocence hinges on the credibility of contending versions of the parties involved, the judicial role necessitates a painstaking review of the evidence for the prosecution and the defense. That, again, is the task before us in this case -- to sift the veridical grain from the apocryphal chaff in the mass of conflicting

evidence expectedly marshalled by the parties in support of their respective contentions. We shall accordingly discuss the evidentiary features of this case.

The People's evidence on this incident subject of Criminal Case No. 287 was adequately summarized by the trial court in its decision and we reproduce the pertinent portions thereof:

"In the evening of February 27, 1987, a Junior-Senior (JS) prom of the high school was held at the basketball court at Albor. The herein complainant went to see the program which started at about eight o'clock in the evening. She was alone and without any companion while attending it. Later, at about eleven o'clock in the evening she decided to go home. She did not reach her boarding house because she met her sweetheart, Dindo Castillon, who held her hand and said that he wanted to talk with her. They proceeded to the nearby municipal stage and sat down at one side. Dindo Castillon started to romance her by embracing and kissing her. Both feeling amorous, they had sexual intercourse on the floor of the stage.

"After Dindo had finished the sexual act but was still sitting on top of her, he called out, saying: "Come her(e) Bay, it's now your turn." When Arlene heard him, she twisted around to get free as she did not like what he said. Instead, Dindo held both her hands. Then Valeriano Cabajes, nicknamed Ibong, came near her front and suddenly boxed her two thighs. Because of the pain from the blows, she could not move anymore. Valeriano got on top of her and inserted his penis in her vagina while she shouted: 'My Lord, help.' She recognized Valeriano by his voice when he spoke. She even reproached him telling him that he was her relative. He replied saying: 'If other persons can get you why not your relative.' While Valeriano was having intercourse with her, Dindo Castillon ran away.

"After this harrowing incident, she just cried and went home alone to her boarding house. It was already about twelve o'clock midnight. She went to sleep without telling anybody what had happened to her. She was afraid as the accused had threatened to kill her if she reported the incident to anyone. The following day, a Saturday, she went home to Barangay Kahayag but did not tell her parents about the incident. She returned to Albor on Sunday afternoon."[6]

The defense evidence and version of the same incident, as capsulized in the brief for appellants, is otherwise:

"In the evening of February 27, 1987, a JS prom was held in Albor Municipal High School. At about 11:00 o'clock that evening, from the school site of Albor Municipal High School, appellant Dindo Castillon proceeded to the rented house of complainant in order to see her as it was their agreement. After seeing Arlene, he invited her to stroll around at the school site (to) which she agreed. As they strolled, the dance in the JS prom was still going on in the basketball court. Then they proceeded to the stage of the school where they conversed and engaged in romancing. After a while, they prepared themselves for a sexual intercourse. They were about to engage in the sexual act when suddenly a person lighted a match near their heads. Seeing about three persons on the stage, Dindo and Arlene stood up and hurriedly put on their pants and ran away. (T.S.N., p. 3 to 9, September 28, 1989)

"The three turned out to be Reden Llamera, Joseph Sembillo and the other appellant Victoriano Cabajes. They were following Dindo and Arlene up to the stage and when the two were romancing, they also watched them. Not contented with just being under the stage, they climbed up the stage. While already on the stage observing what Dindo and Arlene were doing, Joseph Sembillo lit a match, to look for his slipper (T.S.N., p. 9 to 11, September 28, 1989; p. 6 to 8, December 5, 1989, Castillo and Cabajes, testifying, respectively)."[7]

We feel that a restatement of the applicable evaluative guideposts is in order. Indisputably, rape is a reprehensible crime and all those who are guilty must be severely punished. More often than not, the woman is a victim twice: first, of the sexual assault and, second, of the social stigma which attaches to the victim, though undeserved. Nonetheless, the records of the case must be examined with due care and caution. The exacting standard of proof

beyond reasonable doubt acquires more relevance in rape charges which are easy to make but harder to prove and harder still to defend by the party accused who may be innocent.[8]

To warrant a conviction in a rape charge, the victim's testimony must be clear and free from contradictions.[9] In prosecuting offenses of this nature, conviction or acquittal virtually depends entirely on the credibility of complainant's testimony because of the fact that usually only the participants can testify as to its occurrences.[10] It is a fundamental principle in rape cases that the evidence for the prosecution must stand or fall on its own merits and can not be allowed to draw its strength from the weakness of the defense evidence.[11] The seriousness with which the State rightfully views the matter with the corresponding imposition of the punishment that fits the crime calls for extreme care on the part of the judiciary to avoid an injustice from being done to an accused.[12]

We must also keep in mind that the factual findings of the trial judge who had the opportunity to observe the demeanor of the witnesses and to assess their credibility is entitled to the highest degree of respect.[13] This Court is not precluded, however, from carefully scrutinizing the evidence to ascertain whether a fact or circumstance has been overlooked or was misinterpreted by the lower court judge. This is the essence of appellate review. Otherwise, the presumption of innocence might go for naught.[14] If the judgment should appear to be based on a misapprehension of facts, this Court can and will review the findings of fact of the lower court.[15]

After a meticulous perusal of the records, we yield to the legal and moral persuasion that the People has not been successful in establishing with moral certainty the guilt of appellants. In the instant case, complainant's testimony shows an inherent lack of credibility on crucial points, as well as disturbing inconsistencies which cast serious doubts on the veracity thereof.

Arlene, when asked how the alleged sexual assault transpired testified on direct examination as follows:

x x x

"Q.

While at the stage of Albor Municipal High School, what happened, if any?

A.

Kissing.

Q.

Who was kissing with whom?

A.

Dindo Castillon and myself, sir.

Q.

After kissing, what happened?

A.

He had sexual intercourse with me.

Q.

After he had sexual intercourse, immediately after he had sexual intercourse with you, what did he do, if any?

A.

He called the attention of Ebong Cabajes, 'come, here bay, it's now your turn.'

Q.

What was the position of Dindo Castillon at that time when he called, 'Ebong come bay, it's now your turn'?

A.

He was sitting on me.

Q.

When you heard the calling of Dindo Castillon to (sic) Ebong Cabajes, 'come bay, it's now your turn', what did you do?

A.

I twisted around.

Q.

Why did you move around?

A.

Because I don't (sic) like it.

x x x

Q.

What did Dindo Castillon do after, while you were moving around?

A.

Dindo Castillon held me.

Q.

What part of your body was held by Dindo Castillon?

A.

My hand.

Q.

Which of your hand(s)?

A.

Left and right, sir.

x x x

Q.

What happened when he, Ebong, approach(ed) you?

A.

Dindo Castillon held me and Ebong was there in front of me and he boxed my thighs.

Q.

Where were you held by Dindo Castillon?

A.

My hand.

x x x

Q.

What happened next after you were boxed by Ebong Cabajes?

x x x

(AFTER TWO MINUTES)

Court:

(Referring to the witness)

Q.

Did you understand the last question?

A.

Then after he boxed my thighs I could not any-more moved (sic) because of the pain then he inserted his penis in my... and I shouted my Lord help!"[16] (Emphasis ours.)

On cross-examination, she declared:

"Q.

Just after Dindo Castillon ejaculated, the first that he did was to stand up and put on his brief?

A.

He did not stand up because he called the attention of Ebong.

Q.

According to you, Dindo called Ebong and he did not stand up, did he squatting (sic) near your feet?

A.

Yes, Sir.

Q.

As a matter of fact, while Dindo was still squatting near your feet and he called on Ebong, you even saw the penis of the sex organ of Dindo, is that correct?

A.

Yes, sir.

x x x

Q.

How far from your feet was Dindo squatting when he called Ebong?

A.

Very near sir.

Q.

Please point the distance.

A.

(Witness pointing the distance of about 2 feet)."[17]

In the aforequoted testimony, Arlene stated that Dindo was "sitting" on her just after their sexual intercourse when he called Ebong "Come bay, it's now your turn." It does not need to strain one's imagination to say that if Dindo was sitting on Arlene's thighs, supported by his knees, he would accordingly be in a crouching posture. Then, when Arlene "twisted" her body, Dindo is supposed to have held both her left and right hands, possibly half-raised near her face, thus pinning her body down. It was while Dindo was in such a crouching position that Ebong allegedly "boxed" her thighs, which is impossible since her thighs were then covered by the lower part of Dindo's body.

Even if it were assumed that Dindo was "squatting" about two (2) feet from Arlene's feet, as she admitted on cross-examination, when the former held both her hands, Dindo would be leaning over and pinning down Arlene's body, thereby covering her thighs with his body. In such relative positions, it would be well-nigh impossible for appellant Cabajes to box Arlene's thighs. These are physical facts, drawn from ordinary human experience and ratiocination, that irresistibly cry for judicial acceptance.

Shifting to another aspect, it bears noting the well-settled rule that in the crime of rape, alleged to have been committed by force, it is essential that the element of voluntariness on the part of the victim be absolutely lacking.[18] In the instant case, Arlene's testimony shows that there was no physical struggle on her part signifying her vehement refusal to submit to the intercourse complained of, nor of the obstinate resistance which one would naturally expect from an unwilling victim. As shown by her own testimony on cross-examination, she had every opportunity to thwart the impending sexual violation, thus:

"Q.

When Dindo called Ebong while squatting, you remained lying down on the floor, am I correct?

A.

Yes, Sir.

Q.

You did not yet put on your panty and your blouse?

A.

Not yet, Sir.

Q.

After Dindo called Ebong, did you look around?

A.

No, Sir.

Q.

And then how many minutes after Dindo called Ebong have (sic) elapsed when Ebong finally got near you?

A.

Two (2) Minutes, Sir.

Q.

And when Ebong arrived, of course, he immediately removed his trousers and perhaps only his halfway?

A.

Not yet, Sir.

Q.

On that time, you said when Ebong was able to mount himself on top of you, all you said was 'My Lord', is that correct?

Atty. Ravelo:

Objection, Your Honor, misleading, she said, 'My Lord help'.

Atty. Moleta:

I stand corrected, Your Honor.

Witness:

I told him, "don't because we are related."

Q.

After that all you said "My Lord help", you say (sic) it in English?

A.

My Lord is in English and help in the dialect.

Q.

You mean, "My Lord, tabang"?

A.

Yes, Sir.[19](Underscoring supplied.)

If, as she said, she did not like the fact that Dindo called Ebong to take his turn and she necessarily knew what that was supposed to have meant, and with her subsequent admission that Dindo was actually merely squatting near her feet, why did she not stand up and run away? At the very least, she could and should have shouted and protested against Dindo's announcement to give her to another man. It baffles the mind why she remained lying there almost naked for two minutes after Dindo called Ebong, particularly in light of her claim that she had no sexual experience prior to February 27, 1987.[20] Surely, a more vigorous opposition to the impending assault on

her virtue is assumed to be adopted by an inexperienced victim on the threshold of womanhood. The complainant did not make any manifest resistance expected of a woman defending her honor and chastity.[21] She could have easily made an outcry or resisted her attacker who was unarmed and therefore without danger to her life, in order to attract the attention of the people attending the dance for the JS program then going on in the basketball court.[22] Considering that she was not threatened at knife or gun-point, her tenacity of resistance "was not enough to show the kind of resistance expected of a woman defending her virtue and honor." [23]

The conduct of the victim immediately following the alleged sexual assault is of utmost importance as tending to establish the truth or falsity of the charge of rape. The conduct of herein complainant appears contrary to the natural reaction of an outraged woman robbed of her honor.[24] Arlene's behavior right after the alleged assault was wholly inconsistent with the charge of rape. Her reaction seemed to be too perfunctory and unconcerned about her alleged traumatic ordeal. Witness her narration of the events after her supposedly harrowing experience:

"Q.

From the stage, you went directly to your house?

A.

Yes, Sir.

Q.

Upon you(r) arriv(al) in your rented house, you took your supper?

A.

No, Sir.

Q.

Because you are (sic) already taken your supper before you went to the J.S. program?

A.

Yes, Sir.

Q.

So, upon arrival at your house, you went to sleep?

A.

Not yet, Sir.

Q.

Before you go to sleep, you converse with your co-boarders in that rented house of yours? (sic)

A.

Yes, Sir.

x x x

Q.

What did you converse with your co-boarders that two were came back? (sic)

A.

Regarding the JS program, Sir.

Q.

After you conversed, after a while you went to sleep?

A.

Yes, Sir.

Q.

What time in the following morning did you wake up?

A.

At 5:00 o'clock in the morning.

Q.

That is your usual hour of waking up?

A.

Yes, sir." [25] (Emphasis supplied.)

The fact that she returned to her boarding house composed and unruffled, had gossiped with her co-boarders about the JS program as if nothing unusual had happened, and had no difficulty falling asleep and thereafter waking up at the usual hour provokes disbelief that she was really raped by appellants. Surely, her co-boarders would have noticed something amiss and inquired about it, especially since she said she helplessly cried after the incident hence she should have been emotionally upset.

Arlene testified that on March 3, 1987 at about 7:00 P.M., or four days after the alleged sexual assault, she again went to the school plaza to get her notebook which she left there on the same afternoon. Twenty meters away from the school plaza, she saw Dindo Castillon and Valeriano Cabajes already there. Although she was alone, she nevertheless proceeded to the plaza. She testified that she was again raped by appellants and one Bimbo Eballe. This allegation was the subject of the complaint in Criminal Case No. 228 wherein appellants were acquitted, but we have to advert to relevant facts and findings therein since they pertinently shed light on complainant's representations and credibility in the case at bar.

If complainant was really sexually assaulted by Dindo Castillon and Valeriano Cabajes on February 27, 1987, she would have taken the necessary precautions in order that appellants would not be afforded an opportunity to repeat such a dastardly act. It was already 7:00 o'clock in the evening and, presumably, there would only be a few persons, if at all, remaining in the school grounds. Logic and common sense would dictate that Arlene leave immediately rather than proceed to the school plaza, knowing that appellants were there. The normal human reaction would be for the victim to take flight at the first opportunity in order to avoid her tormentors. Surely, she would not risk a second rape, knowing that she could easily come back and get her notebook at a later time. Her decision to proceed to the school plaza, if her allegations were true, would be courting trouble and is not in accord with rational human behavior, hence the dubiety of her story.

Complainant's failure to notify the authorities or at the very least, her parents about her agonizing experience also seriously affects the truthfulness of her narration. In the morning following her supposed distressing experience,

she went home for the weekend, as was her usual practice, to visit her parents. She had the whole weekend to confide to them. Her life was in no way in danger considering that her residence was about a kilometer away from Albor proper where the alleged raped occurred, aside from the protection afforded by and available in the household.

The Court also takes note of another inconsistency in the testimony of the complainant which further serves to demolish the case for the prosecution. Arlene initially declared:

"Q.

When did you hear for the first time the voice of Ebong Cabajes when you said you recognize(d) his voice?

A.

When he spoke.

Q.

What did he say?

A.

I told him, 'you're my relative' and he answered 'if another person could take advantage of you why not me who is your relative.'

Q.

After he succeeded in inforcebly (sic) having sexual intercourse with you, what else happened?

A.

The two of them r(a)n away."[26] (Emphasis supplied.)

In the aforementioned testimony, Arlene stated that appellants ran away after the alleged sexual assault. Yet, when asked by the private prosecutor where Dindo was at the time of the supposed rape by appellant Cabajes, she made a diametrically opposed disclosure:

"Q.

By the way while Ebong was having a forceable (sic) sexual intercourse with you, where was Dindo Castillon?

A.

He already r(a)n away.[27] (Emphasis ours.)

In its decision, the lower court observed that the admitted presence of Valeriano Cabajes at the stage strongly corroborated the testimonies of Arlene Devocion and Joseph Sembillo regarding the wrongdoing of appellants. In addition to the more detailed report given by the complainant of what appellants allegedly did to her, prosecution witness Joseph Sembillo declared that both appellants did something that was not proper, that is, they raped Arlene.[28]The said finding of the trial court is belied by the following testimony of Joseph Sembillo admitting, on cross-examination, that he in fact saw nothing that would incriminate Dindo Castillon nor Valeriano Cabajes:

"Q.

In your direct testimony when you were asked what did Dindo Castillon and Arlene Devocion do while they were (o)n the stage you said that they did something, am I correct?

A.

Yes, sir.

Q.

And that which you said they did something means Dindo Castillon and Arlene Devocion had a sexual intercourse, am I correct?

A.

Yes, sir.

Q.

You also said that Dindo Castillon and Arlene Devocion are sweethearts, correct?

A.

Yes.

Q.

Hence, you were not surprised that Dindo Castillon and Arlene Devocion did a (sic) sexual intercourse because you know that they are sweethearts?

A.

Yes.

Q.

You also told the Court that after the intercourse between Dindo Castillon and Arlene Devocion, Ebong followed him, followed Dindo Castillon, you and Dindo Castillon already left the stage, correct?

A.

Yes, sir.

Q.

In short, you have not seen anymore what Ebong Cabajes and Arlene Devocion did after Ebong Cabajes followed Dindo because you already, you and Dindo already left the stage, correct?

A.

Yes."[29] (Underscoring ours.)

Complainant Devocion's credibility is further eroded by the fact that her testimony was refuted by the revelations of prosecution witness Joseph Sembillo which are closely in accord with the version of the defense. As earlier noted, Arlene stated that at 11:00 A.M. of February 27, 1987, she decided to go home after watching the JS program which was held in the basketball court of the Albor Municipal High School. On her way home, she said she met Dindo who invited her to go to the stage of the same school.[30] Joseph Sembillo, on the contrary, declared that he saw Dindo Castillon in the dancing hall and that the latter invited him to Arlene's place. It was at Arlene's boarding house, that they all agreed to go back to the school grounds.[31]

We take judicial cognizance of the fact that in rural areas in the Philippines, like Albor, Surigao del Norte, young ladies are strictly required to act with circumspection and prudence. Great caution is observed so that their

reputations shall remain untainted. Any breath of scandal which brings dishonor to their character humiliates their entire families. The fact that Arlene agreed to engage in pre-marital sex is already a disgrace to her family, what more of her acquiescence to have sexual intercourse on a stage near the vicinity where the JS program was being held and prying eyes and ears abound. Thus, she must have reasoned that it is better to cry "rape" and bring suit thereon to salvage her honor in part than to have her reputation sullied in the community by being bruited around and stigmatized as a woman of loose morals.

Under the foregoing premises and illations, the Court holds that the prosecution has failed to discharge the onus probandi on the requisite evidentiary quantum for a pronouncement of guilt beyond reasonable doubt. The constitutional presumption of innocence in favor of appellants not having been successfully rebutted, the judicial conscience cannot rest easy with their conviction in this case.

WHEREFORE, the appealed judgment of the court a quo is hereby REVERSED and SET ASIDE. Accused-appellants Dindo Castillon and Valeriano Cabajes are hereby ACQUITTED on reasonable doubt. Their immediate release is ordered, unless there is any other valid cause for their continued deprivation of liberty. SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Nocon, and Campos, Jr., JJ., concur.

[*] SECON DIVISION

[1] Original Record, Criminal Case No. 287, RTC, Branch 33, Surigao City, 1.

[2] Ibid., id., 129.

[3] Ibid., id., 140.

[4] Ibid., id., 172-173.

[5] Brief for Accused-Appellants, 4; Rollo, 37.

[6] Ibid., id., 130.

[7] Brief for Accused-Appellants, 2-3; Rollo, 37.

[8] People vs. Bacdad, 196 SCRA 786 (1991).

[9] People vs. Geneveza, 169 SCRA 153 (1989).

[10] People vs. Abonada, 169 SCRA 530 (1989).

[11] People vs. Bacdad, supra.

[12] People vs. Nazareno, 80 SCRA 484 (1977).

[13] People vs. Lao, et al., 204 SCRA 337 (1991).

[14] People vs. Gabiana, 117 SCRA 260 (1982).

[15] People vs. Honrado, 204 SCRA 858 (1991).

[16] TSN, November 11, 1988, 6-11.

[17] Ibid., December 6, 1988, 20-21.

- [18] People vs. Geneveza, supra.
- [19] TSN, December 6, 1988, 21-23.
- [20] Ibid., December 6, 1988, 4.
- [21] People vs. Cabading, 174 SCRA 48 (1989).
- [22] TSN, December 6, 1988, 24.
- [23] People vs. Geneveza, supra.
- [24] People vs. Cui, Jr., 162 SCRA 220 (1988).
- [25] TSN, December 6, 1988, 24-26.
- [26] TSN, November 11, 1988, 12-13.
- [27] Ibid., id., 13.
- [28] Rollo, 19-20.
- [29] TSN, June 29, 1989, 15-17.
- [30] TSN, November 11, 1988, 5-6.
- [31] Ibid., June 29, 1989, 5-7.

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