

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORBERTO ERROJO, ACCUSED-APPELLANT.

G.R. No. 102077. January 04, 1994

Ponente: NOCON, J.

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NOCON, J.:

At the lithesome age of fourteen, a girl is just metamorphosing into womanhood. No worse experience can transform the joys and thrills of this age into a nightmare than the crimes of rape twice committed on her person by a married man that results in pregnancy and untimely motherhood. No less than sheer condemnation for such licentious act is warranted and yet, pursuant to its Constitutional mandate, this Court will take a second look to determine, if indeed, the proofs show beyond reasonable doubt that said crimes had been committed and that the accused-appellant herein is the malefactor.

In an information dated January 30, 1990, accused Norberto Errojo alias "Norbing" was charged before the Regional Trial Court of Roxas City, Branch 15, of the crimes of rape, committed as follows:

"That on March 5 and 12, 1989, in Brgy. Cudian, Ivisan, Capiz, Philippines, and within the jurisdiction of this Court, the said accused Norberto Errojo alias Norbing, armed with a knife, by means of violence and intimidation, willfully, unlawfully and feloniously have carnal knowledge of ANITA Q. ARABIA against her will."[1]

Upon arraignment, accused with the assistance of a counsel of his own choice, entered a plea of not guilty. Thereupon, the trial of the case proceeded on its course and a decision[2] thereon was rendered on June 28, 1991, the dispositive portion of which states as follows:

"WHEREFORE, the court finds the accused, Norberto Errojo, guilty beyond reasonable doubt for the crimes of rape penalized under Article 335 of the Revised Penal Code as amended by Republic Acts Nos. 2632 and 411 and sentenced him to suffer the penalties of:

1. Reclusion perpetua for the crime of rape committed by the accused on March 5, 1989 and to indemnify the complainant, Anita Arabia, the sum of P40,000;
2. Reclusion perpetua for the crime of rape committed by the accused on March 12, 1989, and to indemnify the complainant, Anita Arabia, the sum of P40,000;

Since bail is not a matter of right on capital offenses even with the non-imposition of the death penalty, with the finding of convictions herein, the court orders the cancellation of the property bond of the accused. He shall be placed under detention pending the finality of herein judgment.

Costs against the accused.

SO ORDERED."[3]

The prosecution established the following facts:

On March 5, 1989 at around 6:00 p.m., complainant Anita Q. Arabia, who was then fourteen years and eight months old, was walking alone on a pathway in Barangay Cudian, Ivisan, Capiz on her way home from her sister's house when a man collared her from behind. She looked back and recognized the man as the accused Norberto Errojo.[4]

Accused poked a knife at complainant, held her by the neck and without uttering a word, pushed her towards a forested area. Complainant asked accused what he wanted from her but the latter kept silent and continued to push her with a knife poked against her neck. Then, accused held complainant by the shoulders, turned her body towards him and pushed her to the ground.[5]

With his right hand still thrusting the knife at complainant's neck, accused took off his pants and complainant's shorts and underwear. Accused warned her not to move. Then, accused went on top of her, inserted his organ into hers, and consummated the sexual act.[6] Accused repeated the coitus consuming more or less the same period as the first time.[7] Thereafter, accused, before leaving, threatened complainant not to tell her parents about the incident, otherwise, he would kill her and her brothers.[8]

Complainant wiped her private part with her underwear, and noticed blood in it.[9] Nevertheless, she put it on, together with her shorts and proceeded back to their house. Her mother asked her why she was late. She lied to her by telling her that her sister requested her to watch their store. Then, she went to the comfort room, washed herself and went to sleep.[10]

One week thereafter, or on March 12, 1989, at around 6:00 p.m., accused again accosted complainant on her way home after bringing the laundry of her sister. Accused again succeeded in raping complainant twice at the point of a knife. He also warned complainant not to tell the incidents to her parents and her brothers.[11]

Complainant revealed to the court her fear for the accused's threats on her life, and on the lives of her brothers. Thus, she did not reveal the incidents to anyone, including her parents. However, the complainant intended to take an advance officer's course in the Citizen's Military Training (CMT) of their school. A medical certificate showing her physical fitness was needed so she submitted herself to a medical examination on November 16, 1989. The resident physician of Roxas Memorial Hospital, Dr. Mariano Alovera, discovered and informed her that she was in an advanced state of pregnancy, being already eight (8) months in the family way. For the first time, she disclosed to her mother the sexual assaults of the accused upon her person on March 5 and 12, 1989.[12] On December 11, 1989, complainant delivered a boy whom she named Amer John Arabia. As a consequence, she discontinued her studies and took care of her son.[13]

The accused, forty-one years of age, married and a former resident of Barangay Cudian, Ivisan, Capiz until August, 1988, denied the charges of rape against him. He stated that he had transferred his residence to Barangay Cabugao, Ivisan, Capiz, upon the advice of his father because of frequent quarrels with the family of complainant.[14] From his present residence to barangay Cudian, one has to take a pumpboat, a jeep and a tricycle.[15]

When he transferred to Barangay Cabugao, he asked his compadre, Leopoldo Palanimpató, to attend to his farmland. His farm animals, on the other hand, were left under the care of one Jimmy Vegas, who, however, abandoned them sometime in February, 1989. Accordingly, he went to Barangay Cudian to get someone to herd the carabaos. Jimmy Vegas, according to him, was the boyfriend of complainant. When asked why he said that, he explained that he had seen them ride his bicycle together.[16]

As to his whereabouts on March 5, 1989, he claimed that he worked with four (4) other companions repairing the main gate of Crisanto Bista's fishpond located at Barangay Cabugao from 7:00 o'clock in the morning. He went

home that day at around 8:00 o'clock in the evening.[17] On the other hand, on March 12, 1989, he claimed that at around 5:00 o'clock in the afternoon, he and his son fetched water from a public faucet near the house of Crisanto Bista.

On cross-examination, accused declared that he had a quarrel with Rolando Valles Arabia, complainant's first cousin, while he and his wife were watching the thresher. Asked when the incident happened, he said he was still staying then in Barangay Cudian but specified that it was in the year 1989.[18] He alleged that Rolando's father and complainant's father and brothers confronted him and even fired at his house. But he was the one charged with illegal possession of firearm because the barangay captain of Cudian belongs to the same family as the Arabias.

Crisanto Bista, the barangay captain of Barangay Cabugao, testified that the accused Norberto Errojo is a resident of his barangay since August 5, 1988 up to the present. He corroborated accused's testimony that on March 5, 1989, he had the main gate of his fishpond repaired by the accused and four (4) other men starting at 6:00 o'clock in the morning. After working on the fishpond, he invited the workers to his house to eat dinner.[19] On March 12, 1989, he stayed at home and saw accused and his son fetch water at around 6:00 o'clock p.m. from the faucet near his house.[20]

The sole issue in this appeal boils down to the question of credibility. The rule is to accord much weight to the impressions of the trial judge, who had the opportunity to observe the witnesses directly and to test their credibility by their demeanor on the stand. By such observation, he must have been able to ascertain whether they honored their oath. Thus, in the absence of a showing that his conclusions are arbitrary, they are judiciously accepted on appeal and even considered conclusive upon the reviewing court.

In believing complainant's story, the trial court took into account "the sincerity and demeanor she displayed while testifying as she described and gave details of the terrible experience which had befallen her particularly on (the) March 5, 1989 incident." [21] Due regard was given to the fact that complainant at the time of the commission of the crime was only fourteen (14) years of age, a lowly barrio lass, simple and innocent.

Accused-appellant argued that complainant should have resisted the attack while the former was thrusting a knife at her and at the same time taking off his pants, her shorts and underwear. By not doing so, she did not employ enough force that the law required.

It bears repeating that the force and violence required in rape cases is relative; when applied, it need not be overpowering or irresistible. What is essential is that the force used is sufficient to consummate the purpose which the offender had in mind, or to bring about the result. The force and violence necessary in rape is naturally a relative term, depending on the age, size and strength of the parties and their relation to each other.[22] All consideration of whether it was more or less irresistible is beside the point.[23]

At a tender age of fourteen, innocent of the ways of the world, complainant is no match to the accused-appellant, a forty-one year old married individual who sexually assaulted her. The sheer force and strength of the accused-appellant would have easily overcome any resistance that complainant could have put up. What more if the assault was committed with a deadly knife, the sight of which would have necessarily evoked fear in complainant. Thus, it is understandable if she easily succumbed to the sexual intrusion.

Her failure to disclose the outrage on her person to anybody including her parents is due to the threats on her life and her brothers. Indeed, one cannot expect her to act like an adult or a mature and experienced woman who would have the courage and intelligence to disregard a threat to her life and complain immediately that she had been sexually assaulted.[24] It is not uncommon for young girls to conceal for sometime the assaults on their

virtue because of the rapist's threats on their lives.[25]

It has also been held that delay or vacillation in making a criminal accusation does not necessarily impair the credibility of the witness if such delay is satisfactorily explained. The law on prescription of crimes would be meaningless if we were to yield to the proposition that delay in the prosecution of crimes would be fatal to the State and to the offended parties. In fixing the different prescriptive periods on the basis of the gravity of the penalty prescribed therefor, the law takes into account or allows reasonable delays in the prosecution thereof.[26]

In the instant case, the complainant would not have filed the rape charges had she not become pregnant. This Court has taken judicial cognizance of the fact that many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain rather than reveal their shame to the world and risk the rapists' making good their threats to kill or hurt their victims.[27]

Moreover, complainant apparently became aware of her state of pregnancy when she submitted herself for physical examination as a pre-requisite for Citizens Military Training. Her parents likewise did not have an inkling whatsoever that she was pregnant probably because of her upright behavior. Whether a woman may be unconscious of her pregnancy is hardly credible but may happen in rare instances.[28] Thus, the delay in prosecuting the rape in this case has been sufficiently explained and does not destroy the credibility of complainant.

Her naivete in passing through the same path one week after the first assault may likewise be attributed to her tender age. She simply did not realize the danger to which she exposed herself. Even adults sometimes fail to foresee imminent hazards in everyday life. So a fourteen-year old girl's indiscretion in laying herself open to another rape when she passed the same spot should not be taken against her.

The insinuation of accused-appellant that complainant was simply used by her family to harass him because they had a "grudge" against his family is preposterous. Noteworthy is the fact that the accused-appellant failed to specify what his family and the family of complainant were quarreling about. Accused-appellant made general averments of a long-standing feud between them. When asked for details, he simply said that he came to blows with Rolando Valles Arabia, a first cousin of complainant and later, with Rolando's father and complainant's father and brothers. Apparently, the controversy between them relates to a trifling matter. Hence, it is inconceivable that complainant would make up a story of rape with all its attendant scandal and humiliation just because of a petty quarrel. She would not have made the offense public and endured the ordeal of testifying to all its gory details if she had not in fact been raped.[29]

Since complainant was not impelled by any improper motive in filing charges of rape against accused-appellant, her positive testimony pointing to the latter as the perpetrator of the rape must prevail over his defense of alibi. This Court has consistently held that alibi as a defense is weak because it can easily be manufactured and fabricated.[30] The social standing of the witness corroborating the accused-appellant's alibi is not a guarantee of its truthfulness. Testimony to be believed must not only proceed from a credible witness but must be credible in itself and be able to stand the test of scrutiny along with the other testimonies.[31]

After this painstaking review of the records of the case, we conclude that the trial court did not err in ruling that accused-appellant is guilty beyond reasonable doubt of the crimes charged. Worthy of note is the fact that the information in this case charged two crimes of rape, one committed on March 5, 1989 and the other, on March 12, 1989. While there is duplicity of offenses charged in the information, the accused-appellant, however, failed to object to it before trial. Thus, in accordance with Section 3, Rule 120 of the Revised Rules of Court, the trial court correctly convicted the accused-appellant herein with two offenses of rape as were charged and proved and imposed on him the penalty of reclusion perpetua for each of them. It failed, however, in the dispositive portion of

its decision to require the accused-appellant to acknowledge complainant's offspring insofar as the latter's filiation is concerned and to support the latter in accordance with Article 283 of the New Civil Code and Article 345 of the Revised Penal Code.

WHEREFORE, the decision dated June 28, 1991 of the trial court convicting the accused-appellant Norberto Errojo of the crimes of rape is hereby **AFFIRMED**. Said accused-appellant is further sentenced to acknowledge the filiation of the complainant's offspring and to give support, the amount of which shall be determined by the trial court. Accordingly, the records of this case are hereby **REMANDED** to the Regional Trial Court of Roxas City, Branch 15, for the fixing of the amount of support.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Rollo, p. 3.

[2] Penned by Judge David A. Alfeche, Jr.

[3] Rollo, p. 22; citation omitted.

[4] TSN, October 6, 1990, p. 3.

[5] Ibid, pp. 3-4

[6] Ibid, p. 4.

[7] Ibid, p.5.

[8] Ibid, pp. 5-6.

[9] Ibid, p. 22.

[10] Ibid.

[11] Ibid, pp. 6-7.

[12] Ibid, p. 9.

[13] Ibid, p. 11.

[14] TSN, March 6, 1991, p. 5.

[15] Ibid, p. 8.

[16] Ibid, p. 6.

[17] Ibid, p. 17.

[18] Ibid, p. 21.

[19] TSN, February 25, 1991, pp. 3-4.

[20] Ibid, p.5.

[21] Rollo, p. 16.

[22] *People v. Alvarez*, G.R. No. 73071, 213 SCRA 722 (1992).

- [23] People v. Corro, G.R. No. 62673, 197 SCRA 121 (1991).
- [24] People v. Olivar, G.R. No. 101577, 215 SCRA 759 (1992).
- [25] People v. Dabon, G.R. No. 102004, 216 SCRA 656(1992).
- [26] People v. Rostate, et al., GR. No. 91482, February 9, 1993.
- [27] People v. Silfavan, G.R. No. 71510, 151 SCRA 617 (1987).
- [28] Solis, Pedro P., Legal Medicine, 1987 ed., p. 550.
- [29] People v. Estolano, G.R. No. 57737, 193 SCRA 383 (1991).
- [30] People v. Agcaoili, G.R. No. 92143, 206 SCRA 606 (1992).
- [31] People v. Java, G.R. No. 104611, November 9, 1993.

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