

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO FABRO Y ARQUIZA, ACCUSED-APPELLANT.

G.R. No. 104954. December 13, 1994

Ponente: PUNO, J.

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PUNO, J.:

On April 24, 1992, the Court of Appeals[1] affirmed the conviction of appellant MARIO FABRO Y ARQUIZA for the rape of private complainant, REBECCA SEGUANCIA. He now seeks his acquittal on the ground that the prosecution failed to prove his guilt beyond reasonable doubt.

In the Information, the prosecution detailed the commission of the rape by appellant, as follows:

"That on or about the 14th day of May, 1989, in Tamat, barangay Trenchera, municipality of Tayug, province of Pangasinan, New Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused (appellant herein), by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Rebecca P. Sequancia against her will and consent, to her damage and prejudice."

At the time of the incident, private complainant was working for Reyval Lopez as one of his five full-time, live-in maids. Among her co-workers was Janet Fabro, appellant's wife. Appellant previously worked for Lopez, but was no longer in his employ when the alleged rape took place.

As private complainant[2] related it, her sad story began at around nine o'clock in the evening of May 14, 1989, when Lopez sent her to buy band-aids at a nearby store. Unable to make the purchase, she proceeded to the Alicia store located within the premises of the Tayug public market.[3] On her way, she passed an Ihaw-Ihaw restaurant where she saw appellant. Without uttering a word, he started to trail her. She asked him to stop following her, but her words fell on deaf ears.[4]

Finding the Alicia store already closed, private complainant headed back home to Lopez's house. Appellant suggested they go to his cousin to buy band-aid. She ignored him. Suddenly, he grabbed her left hand and dragged her for about eight (8) to ten (10) meters to a dark, deserted area. He kissed her on the lips.[5] She struggled,[6] somehow managing to bite his hand. She tried to escape, but he was able to grab and pull her back. He wrapped his hands around her neck, as if to strangle her. It was then that she lost consciousness. She could not remember how long she passed out.[7]

It took a gunshot of unknown origin to rouse private complainant back to consciousness. She found herself lying on the ground with appellant by her side, zipping up his pants.[8] Her back and private parts hurt, and she discovered sticky matter on her sexual organ. She also realized that her pants were no longer on her. She silently located and put them back on.[9] Appellant fled when a good samaritan, one Jeffrey Cabrales, arrived.[10]

Private respondent, accompanied by Cabrales, reached Lopez's residence at around ten o'clock that same night.[11] Immediately and tearfully,[12]she reported to Lopez her violation by appellant.[13] That same night,

Lopez brought her to the police station, where she filed her complaint.[14] They proceeded to the Eastern Pangasinan District Hospital (EDPH) where she underwent a physical and internal examination conducted by Dr. Leo Gerardo[15] which yielded the following results:

"MEDICAL CERTIFICATE

"May 16, 1989

Date

"83853 - 165

Record Number

"TO WHOM IT MAY CONCERN:

According to the hospital REBECCA SEGUANCIA of Brgy. Toketec Tayug, Pangasinan was examined/treated in this hospital on May 15, 1989 with the following findings and/or diagnosis:

= Linear Abrasion, 5 cm. Anterior Aspect of (1) Elbow.

= Speculum/I.E. Findings:

- Vaginal orifice admits one finger with resistance

- Nulliparous introitus.

- Contusions at the lateral aspect (one at each side) of the labia minora

- No fresh hymenal lacerations

- No vaginal lacerations.

= Vaginal smear for presence of spermatozoa requested. (see attached result).

"REMARKS: patient would need medical attendance and/or incapacitation for xxxx days barring complications.

(sgd)

LEO GERARDO BAUTISTA, M.D.,

Attending physician

Lic. No. 61044"[16]

The vaginal smear showed private complainant was negative for spermatozoa (Exh. 2). The following day, she returned to the police station and gave her formal statement and surrendered the denim pants and orange t-shirt she wore during the attack.[17]

The 21-year-old appellant offered a different version of what transpired on that fateful night of May 14, 1989. According to him, he was visiting his wife at Lopez's store when private complainant dropped by. She asked him to accompany her to the public market. He was initially reluctant. Nonetheless, he accommodated the request when his wife told him to go.[18]

On their way to the market, appellant and private complainant took the road leading to the Ihaw-ihaw restaurant. When they got to the market, she told him "to go home because we have no more to buy." [19] Instead, he

proposed they go to his Ninong Jesus Divia. She agreed. On their way, he kissed and started to undress her. She did not stop him, and even responded to his amorous advances by embracing him.[20] Appellant felt that private complainant was willing to completely give herself to him. They did not, however, consummate their love-making. They merely spent the night kissing each other.[21]

Appellant affirmed that a gunshot was fired that night while he was lying with private complainant on the ground. Upon hearing the shot, they stood up, and she looked for her slippers. It was then that Jeffrey Cabrales appeared and accompanied private complainant home. Appellant also went home.[22]

On cross-examination, appellant admitted that, after he was charged with rape, he sent a letter to Lopez and his common-law wife, asking for their forgiveness. The letter reads as follows:

"Dear Kuyang & Manang,

"Una ay hayaan niyo munang batiin ko kayo ng magandang umaga o hapon po sa inyo, at sana'y datnan kayo ng sulat kong ito na nasa mabuting kalagayan.

"Kuyang & Manang, hindi ko po alam kong paano ko sisimulan ang sulat ko sa inyo. Alam ko po na ako'y nagkasala sa inyo, at alam ko rin pong hindi lang basta-basta kasalanan. Ito'y halos wala ng kapatawaran. Ngunit nandito po ako ngayon sapagkat tinanggap ko naman ang aking pagkakasala -- sa katunayang ito ay hindi ko naman tinalikuran o tinakbuhan bagkos ay hinintay ko po ang araw ng paghatol o pagkuha nila sa aking at taas puso't walang pagtutol na sumunod dahil alam kong ito ang nararapat. Sa kasalukuyan ay heto na ako, nagtitiis subalit walang halong pagdaramdam. At sa totoo lang po Kuyang & Manang, alam nang Diyos kung paano ko pinagsisisihan ito sa maniwala po kayo o hindi. Talaga pong hindi ko alam. Wala po talaga ako sa sariling pag-iisip o katauhan kung bakit at pa'no ko nagawa yon. Sila o siya pang itinuturing ko na mga kapatid lalo na sa inyo Kuyang & Manang na kahit noon pa ay nararamdaman ko ng kayo ang makapagbabago sa akin at heto nga po tinatanggap ko ang parusa. Naririto po ako nagtitiis alang-alang sa kapatawaran. Nagpapasalamat po ako ng taos sa aking puso sa ginawa ninyong ito sa akin sapagkat iminulat niyo ako sa aking mga kasalanan at itinuro sa tiyak na pagbabago. Nagbabago ako nang dahil sa inyo kayat Kuyang & Manang maraming-maraming salamat po sa inyo. Alam ko pong hindi kayo maniniwala ngunit alam ng Diyos at balang araw ito ay mapapatunayan niyo rin kaya't nagmamalik-tuhod po ako sa inyo na sana po ay patawarin niyo na po ako sa aking nagawang kasalanan.

"Kuyang & Manang bigyan niyo pa po ako ng isa pang pagkakataon upang kami'y magbagong buhay. Alam ko po Kuyang may pamilya ka rin at mga anak at naranasan niyo na rin po kong paano ang hirap at sakit ng mawalay sa kanila. Matiis niyo po kaya Kuyang ang ganito lalo na't nasa maselang kalagayan ang asawa mo? Higit malapit na pong manganak, matiis mo kayang wala ka sa tabi niya? Nasisiyahan po ba kayong mawasak ang isang pamilya lalo na sa oras na kailangang-kailangang ka nila kaya't luluhod po ako sa inyong harapan kung iyon and paraan upang mapatunayan ang aking pagsisisi at pagbabago. Nasa inyo ang buhay ko. Pati na rin ang aking kalayaan ay nakasalalay po sa inyo. Kaya't Kuyang & Manang sa ikatatahimik, ikabubuo at ikabubuti ng isang pamilyang hawak mo, nagsusumamo po ako sa inyo na sana po ihulog mo na rin po sa amin ang inyong awa at habag alang-alang sa ikakalaya at sa ikakatiwasay nito. Kaya't maraming-maraming salamat sa inyong mag-asawa alang-alang sa magiging anak ko at pamilya. Huwag niyo na rin po sanang ipagkait ang isinasamba ko sa inyo lalung-lalo na ngayon higit nila akong kailangan dahil malapit na pong manganak ang asawa ko. Alang-alang po sa kanila luluhod at gagapang po ako sa harap ninyo kung iyon ang ibig niyo, makamit ko lamang ang pagpatawad niyo alang-alang sa pamilya ko. Gagawin ko ang lahat ipapangako ko po sa inyo dahil alam ko rin pong napamahal na sa inyo ang asawa ko. Kumusta na rin po yong dalawang bata si Marc at Kim, Sana naman malayo na sila ngayon sa mga sakit.

"Sa inyo po ang aking buhay at kalayaang nakasalalay sa aking pamilya. Nagsisisi na po ako ngayon at naririto isinasamba at hinihingi ang pagpapatawad niyo ng dahil sa inyo nagbago ako. Kaya't maraming-maraming salamat po sa inyo Kuyang & Manang.

Lubos na Gumagalang at

humihingi ng tawad

Mario A. Fabro"

He explained that he wrote the letter to his former employers because he was being charged with a crime he did not commit.[23] He also denied any romantic relationship between him and private complainant. Allegedly, they were mere friends.[24]

After trial, the RTC of Tayug, Pangasinan, Branch 52,[25] convicted appellant for the crime of rape, thus:

"In resume, the Court hereby finds accused Mario Fabro y Arquiza, GUILTY, beyond reasonable doubt, and hereby sentences accused to suffer the penalty of Reclusion Temporal in its maximum period, from 17 years, 4 months - 1 day to 20 years, but considering the Indeterminate Sentence Law, hereby imposes the penalty of Prision Mayor - 10 years, 1 day to 20 years Reclusion Temporal as maximum. Finally, accused is hereby ordered to pay the complainant Rebecca Seguancia the sum of P20,000.00 as moral damages with cost de oficio.

"Accused being detained for failure to post his bail bond at the provincial jail in Lingayen, Pangasinan from the time of arrest on August 17, 1989 up to the rendition of the decision, is entitled to a preventive imprisonment of 1 year, 4 months and 22 days to be credited to him and deductible from his principal penalty.

"SO ORDERED."

On April 24, 1992, the Court of Appeals affirmed appellant's conviction, but modified the trial court's judgment by imposing instead the penalty of reclusion perpetua.

Appellant now forwards the following --

"ASSIGNMENT OF ERRORS

"I

THE COURT A QUO ERRED IN CONVICTING ACCUSED (APPELLANT) MARIO FABRO Y ARQUIZA DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THAT HE COMMITTED ACTS CONSTITUTING THE CRIME CHARGED AGAINST HIM.

"II

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE JUDGMENT OF CONVICTION OF THE TRIAL COURT.

"III

"THE HONORABLE COURT OF APPEALS ERRED IN INCREASING THE PENALTY OF ACCUSED (APPELLANT) TO RECLUSION PERPETUA FROM THAT IMPOSED BY THE TRIAL COURT WHICH IS AN INDETERMINATE PRISON TERM OF 10 YEARS AND 1 DAY OF PRISION MAYOR AS MINIMUM TO 20 YEARS OF RECLUSION TEMPORAL AS MAXIMUM."

We cannot exculpate appellant. The evidence proved his guilt beyond reasonable doubt.

To establish rape under Article 335(1) of the Revised Penal Code, two elements must be shown: that the accused had carnal knowledge of the offended party; and that coitus was done through the use of force or intimidation.

This the prosecution was able to do in the case at bench.

The use of force by appellant on private complainant on the night of May 14, 1989 was set forth clearly in her testimony. She said that he grabbed his hand and dragged her for about ten (10) meters. When he struggled with him, he held her by the neck, choked her, and caused her to faint. Even appellant admitted private complainant's unconsciousness in his direct examination, thus:

"x x x x x x x x

"Atty. Ferrer ?

"Q : When she (referring to private complainant) testified, she stated that you strangled her by her neck and when you did that, she lost consciousness. What can you say about that?

"A : No sir, I did not do that.

"Q : Likewise, when she lost consciousness, that is when you unset her pants. What can you say about that?

"A : Yes, sir.

"Q : You mean to tell us that when she lost consciousness, that is the time you unset her pants? Is that what you mean?

"Prosecutor Bince –

Leading, your Honor.

"Court -

Reform your question.

"Atty. Ferrer ?

"Q : At what point and time did you unset the zipper of complainant Rebecca? Is it during the time she was unconscious or during the time she was conscious?

"Witness –

"A : When she was still conscious, sir.

"x x x x x x x x"[26]

Also, Reyval Lopez testified that when private complainant arrived home that night, her hair was in disarray and there were bruises on her arms.[27] Further, her medical examination revealed that she had a linear abrasion on the anterior aspect of her left elbow. All these establish the force and physical violence exerted on private complainant by appellant.

Appellant, however, argues that the fact of sexual intercourse was insufficiently established by the prosecution. He pounds on private complainant's failure to give direct testimony on the matter, as well as the result of her physical examination. We are not persuaded.

As we held in the case of *People v. Palapal*, 114 SCRA 783 (1982) --

"It is but to be expected that if the sexual assault was committed against the victim while the latter was in a state of unconsciousness, she would not be able to testify on the actual act of sexual intercourse. It is precisely when the sexual intercourse is performed when the victim is unconscious that the act constitutes the statutory offense of rape (e)specially when, as in the instant case, the loss of consciousness was the result of appellant's

act of violence. xxx"

We likewise ruled in the recent case of *People v. San Pedro*, 193 SCRA 384 (1993), viz.:

"xxx Of course, an unconscious woman will not know who is raping her. If the defense theory were to be adopted, then it would be impossible to convict any person who rapes an unconscious woman, except only where a third person witnesses the crime. Henceforth, the clever rapist would simply knock his potential victim out of her senses before actually raping her, to be later immunized from conviction for insufficient identity.

"In a situation like this, the identity of the rapist is determined by the events preceding or following the victim's loss of consciousness. xxx"

In the same vein, a woman raped while unconscious will not be able to narrate to the court her defloration during that state. Nonetheless, her violation may be proved indirectly by other evidence.

In the case at bench, private complainant struggled with appellant until she fainted. When she came to, she was aching, naked from the waist down, and lying next to appellant who was zipping up his pants. She found her t-shirt soiled, and upon the nest of her maidenhood lay sticky matter. All these stand as mute testimony to her wicked fate at the hands of appellant while she was unconscious.

Furthermore, the results of private complainant's physical examination does not negate the commission of rape. While the doctor found no vaginal or hymenal laceration or spermatozoa in her private parts, appellant's acquittal does not follow. It is settled that neither complete penetration[28] nor ejaculation[29] is necessary to constitute rape. What is essential is that there be penetration of the female organ, no matter how slight.[30]

In the case at bench, as correctly found by the Court of Appeals, the "medico-legal findings showed contusions on each side of the labia minora which shows that an object was forced into the vaginal orifice." [31] The fact of such incomplete penetration may be culled, as well, from the testimony of appellant, when he declared to the court during direct examination that:

"x x x x x x x x x x"

"Q : When she (referring to private complainant) opened everything according to you, what do you mean by that?

"A : That she will give, sir.

"Q : What is that?

"A : That she will give herself to me, sir.

"Q : Did she do that to you?

"A : Yes, sir.

"Q : What did you do next when she surrendered her freedom to you?

"A : I used her, sir.

"Court –

Continue.

"Atty. Ferrer ?

"Q : You said you used her, what do you mean by used her?

"A : That it will not enter, sir.

"x x x x x x x x"[32]

By his own admission, appellant "used" private complainant, but "it will not enter." [33] Stated otherwise, he had coitus with private complainant, but his sexual organ would not enter hers completely.

Clearly, appellant had sexual intercourse with private complainant through the use of force. He was, thus, correctly convicted of rape by both the trial court and the Court of Appeals.

In addition, we note the ranting letter appellant wrote to Reyval Lopez and his common-law wife showing his guilt. Most telling is that line where he writes, "Wala po talaga ako sa sariling pag-iisip o katauhan kung bakit at pa'no ko nagawa 'yon. Sila o siya pang itinuturing ko na mga kapatid xxx." (I was not in my right mind that I did that to him/her or they who I consider siblings.) In his testimony, appellant admitted that private complainant was his barkada, his friend, and that he looked up to her like a sister. Clearly, he was writing about the dastardly deed he committed against her. Indeed, he could not offer any other sensible explanation for his letter.

Finally, the Court of Appeals was correct in modifying the penalty imposed on appellant by the trial court. As early as 1974, [34] this Court has held that for offenses on which the law prescribes the single, indivisible penalty of reclusion perpetua, it is the first paragraph of Article 63 of the Revised Penal Code, [35] and not the Indeterminate Sentence Law, [36] which applies. [37] Under Article 335 of the Revised Penal Code, "the crime of rape shall be punished by reclusion perpetua."

IN VIEW WHEREOF, the instant appeal is DISMISSED and the Decision, dated April 24, 1992, of the Court of Appeals in CA-G.R. CR No. 11030 convicting appellant MARIO FABRO Y ARGUIZA and sentencing him to reclusion perpetua is AFFIRMED IN TOTO. Costs against appellant.

SO ORDERED.

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

[1] Through its Tenth Division, composed of Associate Justices Fidel P. Purisima, Minerva P. Gonzaga-Reyes, and Consuelo Yñares-Santiago.

[2] Private complainant stood as sole eyewitness to the rape. When she testified in May, 1990, she was seventeen (17) years old, single, and a resident of Brgy. Toketec, Tayug, Pangasinan. She was then unemployed. Her mother, Lolita Sequancia, Pfc. Hermelito Diaz, and Reyval Lopez corroborated her testimony.

[3] TSN of May 10, 1990, p. 3.

[4] Ibid., at p. 4.

[5] Id., at p. 5.

[6] Id., at p. 6.

[7] Id.

[8] Id.

[9] Id., at p. 6.

[10] TSN of May 10, 1990, pp. 6-7.

[11] TSN of April 18, 1990, p. 10.

[12] Ibid.

[13] TSN of May 10, 1990, p. 7.

[14] Ibid.

[15] Testified on April 18, 1990.

[16] Original Records, p. 9.

[17] Id., at p. 8; TSN of May 17, 1990, pp. 6-8.

[18] TSN of August 15, 1990, p. 11.

[19] Ibid., at p. 12.

[20] Id., at pp. 13-14.

[21] Id., at p. 15.

[22] Id., at pp. 16-17.

[23] TSN of October 25, 1990, p. 6.

[24] TSN of August 15, 1990, p. 19.

[25] Presided by Executive Judge Pedro C. Cacho. The case was docketed as Criminal Case No. T-1009.

[26] TSN of August 15, 1990, pp. 14-15.

[27] TSN of April 18, 1990, p. 10.

[28] See *People v. Castro*, 196 SCRA 679 (1991); *People v. Bacalzo*, 195 SCRA 557 (1991).

[29] See *People vs. Dabon*, 216 SCRA 656 (1992); *People vs. Pomentel*, 216 SCRA 375 (1992); *People v. Generalao, Jr.*, 213 SCRA 380 (1992); *People v. Yambao*, 193 SCRA 571 (1991); *People v. Banayo*, 195 SCRA 543 (1991).

[30] See *People v. Castillo*, 197 SCRA 657 (1991) *People v. Tongson*, 194 SCRA 257 (1991); *People v. Genores*, 193 SCRA 263 (1991).

[31] Decision of the Court of Appeals, dated April 24, 1992, p. 5.

[32] TSN of August 15, 1990, p. 15.

[33] The phrase "to use," when taken in the context of amorous activities, has a sexual connotation. It is a colloquial euphemism for sexual intercourse.

[34] In *People v. Amores*, 58 SCRA 505 (1974).

[35] It provides: "In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed."

[36] Act No. 4103, as amended, December 5, 1933.

[37] See also *People v. Rebulado*, 206 SCRA 763 (1992); *People v. Cruz*, 203 SCRA 682 (1991); and *People v.*

Galang, 174 SCRA 454 (1989).

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