

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CAYETANO OBAR, JR., ACCUSED-APPELLANT.

G.R. No. 105688. February 07, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 18, Leyte in Criminal Case No. H-332, finding appellant guilty of rape.

The information against appellant reads as follows:

"That on or about the 6th day of January, 1990 at about 11:00 o'clock (sic) in the morning in Brgy. Amagus, Municipality of Bato, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused did then and there willfully, unlawfully and feloniously, by means of force and intimidation, lie with and have carnal knowledge with SOFRONIA JUMADAS, a married woman and of good reputation committed by means of threat, force and intimidation with the used (sic) of a scythe while the victim was helpless" (Rollo, p. 4; Records, p. 12).

On arraignment, appellant pleaded not guilty to the charge (Records, p. 22).

After trial, the court a quo found appellant guilty of rape. The dispositive portion[2] of the decision reads as follows:

"WHEREFORE, premises considered, the court finds accused GUILTY beyond reasonable doubt of the crime of RAPE as principal, without any modifying circumstances to consider, hereby sentences accused CAYETANO OBAR, JR. to serve the penalty of Reclusion Perpetua and to indemnify the offended party the amount of P30,000.00, with costs.

"In the service of his sentence accused is hereby credited with the full time of his preventive imprisonment if he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he will only be entitled to 4/5 of the same."

The Facts

The findings of fact of the trial court are as follows:

In the morning of January 6, 1990, Domingo Jumadas left his house at Barangay Amagos, Bato, Leyte to attend to some matters in Barangay Tagaytay of the same town.

At 11:00 a.m., Sofronia Jumadas,[3] the wife of Domingo, brought their cow to a shady place as earlier instructed by Domingo. Thereafter, she went home. What transpired next was narrated by the trial court as follows:

"As she was inside her house and trying to attend to her seeds, she heard a thundering sound at her back and consequently was face to face with Cayetano Obar (accused) with a scythe who was about a meter from her. This Cayetano approached and held her arms up with his right hand and with the left land (sic) holding the scythe placed the weapon at the back of her neck. She did nothing but pleaded mercy. Then accused told her at

last his lust for her can now be fulfilled as her husband is (sic) away. She told accused saying (sic) "why are you doing this Jun (accused) when we are both married and what is the fault of my husband to you that you are doing this?" But the accused was already kissing her. At this juncture, offended party was in a state of fear.

"A while after, she retreated towards their kitchen, so that she might step on a bolo used by her husband to cut banana plants as feeds for their pigs. While retreating back, she tripped on a small table and she fell down to the floor. In spite of her effort to free herself she could not as accused was still holding both her hands. Immediately after, accused opened the zipper of his pants and she noticed his penis was erect. Accused managed to remove her panty with his left hand up to her thighs and with his foot pushed it off her legs -and he tore off her blouse exposing her breast. Then accused started squeezing her breast with his left hand and later raised her skirt. At this moment she cried and accused started inserting his erect penis and was able to penetrate her and satisfy his lust.

"After the sexual intercourse, accused left her by jumping out of the kitchen window. Then, as accused was already gone, she changed clothes and went to Brgy. Tagaytay to meet her husband.

"At about noon time, she met her husband and told him she would separate from him because she was already dirty as she was raped by accused.

"Thereafter, she and her husband went to the Bato Police Station and reported the incident to the Chief of Police at about an hour past noon.

"That later she went to the Hilongos District Hospital for medical examination and treatment" (Rollo, p. 21).

Appellant, on the other hand, claimed that he and complainant became lovers in 1987 after he manifested his love for her. On January 6, 1990, he visited complainant upon her invitation. Once inside the house, they indulged in foreplay but did not consummate the sexual act. Instead, they just sat down and talked. Complainant, who was addicted to gambling, asked appellant for some money. When he refused, complainant got angry and so he left her. Later, he learned that a charge of rape was filed against him.

The version of appellant was summarized by the trial court as follows:

"That he and the offended party have (sic) a close relationship as lovers and the relationship started in 1987. That the first occasion he proposed his love to her was in her house when the husband was away. As a consequence on December 12, of that year, they had sexual intercourse in an abandoned hut, about 600 meters away from the house of the offended party. After this first lovemaking they had frequent trysts but the offended party could not give birth as she was ligated after she delivered her 3 child (sic) by her husband.

"On January 6, 1990 he met offended party at the river and he and she took a bathe (sic). The river was about 300 meters away from her house.

"At about 11:00 o'clock (sic) that same day while he was at her house, Mrs. Jumadas invited him to come (sic) up. While inside, she embraced him and made (sic) known her love to him. After this he brought the offended party to a table and laid her down and they had a romantic foreplay. He was made to suck her nipples and kissed (sic) her vagina. After this romantic episode he sat down and also Mrs. Jumadas sat beside him and began to talk at the table. Mrs. Jumadas asked him money (sic) in the amount of P50.00, but he could not give that amount, that instant, but maybe he could give the following day. But she was demanding that he produce the amount so he told her, 'If that is the case you are forcing me to produce the money, we better break up.' As a reply, she uttered 'you will be sorry,' so he went outside the house" (Rollo, p. 22).

Bases for Determining Guilt

In reviewing rape cases and determining the guilt or innocence of the accused, this Court is guided by three principles: (1) an accusation for rape can be made with facility; it is difficult to prove, but more difficult for the

person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[4]

In resolving whether or not rape was committed, the evidence for conviction must be clear and convincing and the guilt of the accused proven beyond reasonable doubt to overcome the constitutional presumption of innocence.[5] It is therefore with the greatest care and caution that this Court must examine the story of the complainant to determine its veracity in the light of human nature and experience.[6] Conviction follows only after the guilt of the accused has been established by this exacting test.

Prosecution's Evidence Fails Test

The information herein accuses appellant of having carnal knowledge of complainant by means of "threat, force and intimidation." An analysis of the evidence against appellant negates the use of such means.

While complainant claimed that appellant tore her blouse to expose her breast, the blouse was not exhibited in court. In a rape case, the physical evidence showing use of force speaks louder than words.[7]

The medical report, dated January 8, 1990, on the examination of complainant's body did not show any external physical injuries except the "[c]ontusion noted at neck, posterior area" (Exh. B, April 2, 1991; Records, p. 2).

The prosecution alleged that the contusion was caused by the accused when he held the hands of complainant behind her neck. This Court notes that it would have been physically awkward for appellant to continue holding complainant's hands behind her neck when they were lying on the floor. Assuming that they somehow managed to be in that position, the contusion would have been inflicted on complainant's hands, wrists or arms, but not on her neck. If at all, the contusion could have been the result of the back of the neck grating against the rough floor when complainant was lying thereon.

Additionally, this Court believes that it would be extremely difficult if not impossible for any man to use only one hand to grasp and hold securely both hands of a woman for any length of time, while the latter is presumably resisting him, and squirming and struggling to free herself, unless the former be of very much superior strength or physique, or unless the latter be very much weaker than the former. But the record of the physical examination of the accused conducted at the Bato Police HQ on January 10, 1990 (Records, p. 10) shows that the accused is of average height and weight, and of medium built, standing 5'4" and weighing 50 kilograms (or about 110 pounds). His handprint in the same record indicates that he has normal-size hands. On the other hand, the complainant was at that time in her early thirties, and used to living a hardy life as a farmer's wife; there is nothing in the records to show that she was in anything but good physical health.

Complainant said that she had just arrived home and was at the door when appellant, who was then inside the house, approached her. Instead of finding ways to flee outside the house, she retreated towards the kitchen allegedly in the hope of getting hold of a bolo (TSN, May 2, 1990, pp. 8-9).

Complainant had several opportunities to shout for help. Most of the neighbors are relatives of her husband (TSN, April 2, 1991, p. 11). Her three children and their friends were bathing in the river not far from the house (TSN, April 2, 1991, p. 12). But complainant only screamed "Haruuy!" and only once when appellant startled her (TSN, November 28, 1990, p. 23).

Indeed, complainant's failure to flee and/or shout for help before the alleged rape was committed is not consistent with the normal behavior of a woman who feels her virtue being threatened.[8]

Complainant admitted that she was not forced to lie down on the floor. According to her, she tripped on a small

table while retreating into the kitchen and fell by herself.

Appellant apparently had an easy time raping complainant even if he was using only his left hand because his right hand was holding both her hands.

In her cross-examination, complainant testified thus:

"ATTY. VITERBO:

"Q -

You fell down and then he removed your blouse, is that right?

A -

Yes, sir. (Witness demonstrated to this Honorable Court by grabbing the neckline of her T-shirt.)

Q -

He easily did it to remove your blouse?

A -

Yes, sir.

Q -

Then he pull (sic) out your dress?

A -

Yes, sir. My skirt.

Q -

He easily did it to you?

A -

Yes, sir.

Q -

Then he removed your panty?

A -

Yes, sir.

Q -

He easily did it you?

A -

Yes, sir.

Q -

What hand was used in removing the panty?

A -

Left hand" (TSN, November 28, 1990, pp. 30-31).

Let us consider further complainant's testimony on direct examination to enlighten us on the kind of resistance she offered when she was allegedly being sexually violated:

"FISCAL FULACHE:

Q -

Did you resist when Obar held your hand when he placed the scythe in (sic) your neck?

A -

The only thing I did was to plead mercy to him.

Q -

Did he utter anything when he placed the scythe in (sic) your neck?

A -

Yes, sir. There was.

Q -

Tell the Honorable Court what were those utterances?

A -

He said that at last his lustful desire for me can be fulfilled, because my husband according to him is in town.

Q -

Did you have any reply on that remark made by Obar?

A -

Yes, sir. There was.

Q -

What was your reply?

A -

I told him that: "Why are you doing this Jun when we are both married. And what is the crime of my husband to you that you were able to do it to me."

COURT:

Q -

What are you referring to that (sic) word, "Nabuhat"? What is the act you are referring done (sic) by the accused?

A -

He was embracing and kissing me because according to him at last he can fulfill his lust desire for me" (TSN, August 2, 1990, pp. 6-7).

All throughout the alleged assault complainant did nothing but cry, ask queer questions and make odd remarks. She even compared the love-making technique of appellant with that of her husband.

"PROSECUTOR FULACHE:

Q -

What happened after your blouse being (sic) opened by the accused?

A -

He squeezed my breast.

Q -

Which hand did he use in squeezing your breast?

A -

His lefthand (sic).

Q -

Did he do anything with your skirt?

A -

He just raised it. (Witness demonstrated to the Court how it was done by raising his (sic) skirt upward.)

Q -

What hand Obar (sic) used in raising your skirt?

A -

Left hand.

Q -

What did you do when he lifted your skirt?

A -

I cried.

Q -

Aside from crying?

A -

Well, I even told him when he squeezed my tits that my husband was (sic) not even do that to me.

Q -

You made mention that he removed your panty, is it correct?

A -

Yes, sir.

Q -

And your panty was even tore because of its forceful removal?

A -

Yes, sir.

Q -

After he removed your panty, what did he do? A - He started in inserting his penis.

A -

He started in inserting your penis.

Q -

Was he successful in having a penetration to you (sic)?

A -

Yes, sir. He was able to penetrate.

Q -

Did you do anything when there was already penetration?

A -

I just cried and pleaded for pity.

Q -

And despite your pleadings and cryings (sic). what did he do?

A -

He continued what he was doing because according to him at last he was able to achieve his desire" (TSN, November 28, 1990, pp. 6-8).

Complainant testified that when she was lying on the floor, appellant put the scythe down on the floor next to her head, in order to remove her blouse and panty with his left hand even as he continued holding both hands of complainant behind her neck with his right hand. Inasmuch as, at that point, appellant was supposed to have put down the scythe, the threat of bodily harm was no longer immediate, and thus, complainant could have struggled to free herself from appellant's hold, or at least to evade or prevent penetration, but there is nothing in the records to that effect. Instead, she obviously just chose to lie prone and unresisting. Complainant said she kicked appellant's feet, but this claim was made only after appellant's counsel suggested it to her during cross-examination.

"ATTY.VITERBO:

Q -

While Obar was holding you, did you not shout?

A -

I shouted.

Q -

I noticed in your affidavit in your statement to that effect, can you tell this Honorable Court why you did not have that placed in the affidavit that you shouted for help?

PROSECUTOR FULACHE:

The Affidavit was being prepared by the police officer, and if she was not asked regarding this matter, certainly she can not relate that answer.

COURT:

Probably she can answer that. You can ask why.

A -

I no longer know about that.

ATTY. VITERBO:

Q -

But you only shouted was that "Haruuy!"?

A -

Yes, sir. Only that.

Q -

Did you not try to kick him since your feet were free at that time?

A -

I kicked him.

Q -

Was he hit?

A -

Yes, sir.

Q -

How many times did you kick him?

A -

I can not recall how many times did I kick him.

Q -

But you are certain that you kicked many times?

A -

Yes, sir.

Q -

And you remember then pretty well that you kicked him?

PROSECUTOR FULACHE:

Already answered.

COURT:

Q -

This (sic) many times you kicked and you could not remember the number is (sic) he always hit?

A -

Yes, your Honor.

COURT:

Q -

Where?

A -

On his feet.

COURT:

Q -

So, you kicked him only on his feet?

A -

Yes, your Honor.

Q -

You did not kick him near his organ?

A -

I no longer know what I was doing because I was not on my own self' (TSN, November 28, 1990, pp. 22-24).

After the rape, complainant even advised appellant to leave because she still had something to do. Thus:

"PROSECUTOR FULACHE:

Q

What did you feel inside your vagina after accused had ejaculation?

A

I no longer knew as to what really was it. And that I told him saying: "Because you are already finished, please go away now because I still have something to do."

Q

And what did he do after your pleadings?

A

He immediately left by jumping out of the kitchen" (TSN, November 28, 1990, p. 13).

Evidence for the Defense

Appellant claimed that he did not consummate the sexual act. The evidence of the prosecution on this point tended to support this assertion because Dr. Rodrigo N. Pajulio, the doctor who examined complainant, could not say for sure whether there was indeed a penetration, much less one by force.

"FISCAL FULACHE:

Q -

There is in your findings "contusion at labial folds()", will you please tell us Doctor, what is contusion at the labial folds?

A -

The contusion is the injury done but that is still a part of the vagina, outer part.

Q -

What could have been the caused (sic) of the contusion on the labial folds?

A -

It might be forcible entry.

COURT:

Q -

Why do you say it might be you are not certain (sic) of the cause?

A -

Yes, Your Honor.

FISCAL FULACHE:

Q -

Could it be possible, Doctor, that the contusion at the labial folds was on the account of the entrance of a penis?

A -

It could be possible.

COURT:

Q -

But you said you are not certain, it is just your opinion that possibly (sic)?

A -

Yes, Your Honor.

FISCAL FULACHE:

Q -

You made a conclusion that consummated (sic) rape is highly entertained?

A -

Based on the alleged statement of the victim and the findings that I have found (sic) I only entertained but I cannot conclude. I was only entertaining.

COURT:

Q -

That would be your guessed (sic)?

A -

Yes, Your Honor.

Q -

We call it an educated guess?

A -

Yes, your Honor" (TSN, August 1, 1990, pp. 5-6).

Dr. Pajulio also testified that the mucous at the introitus noted in his report was not earlier tested and therefore there was no way of knowing whether it was semen or vaginal excretion. Dr. Pajulio's testimony on this vital point is as follows:

"COURT:

Q -

This mucuos (sic) noted at introitus could this be a cause of the natural lubricant for a woman?

A -

It could be.

Q -

Will you tell the Court the possibility of it could be (sic)?

A -

This could also be cause (sic) by a sperm of a man but only I was not able to perform a laboratory test because our medtech is (sic) not around.

Q -

What was observed you cannot determine? A - Yes, Your Honor.

A-

Yes, Your Honor.

Q -

You said that there is a contusion, would you say that there 2 labial folds, the labial majora and labial minora,

kindly tell the court where is minora and where is majora?

A -

The outer is majora and the inner is minora. In married woman the folds cannot be distinguished.

Q -

That majora is outside and the minora is inside, since you said contusion at the labial folds could you tell the Court which of the folds that sustained a contusion?

A -

At the two folds.

Q-

In such a case as there is a contusion would you say that whether penis (sic) or other things that may cause this would it penetrate inside the vagina also at the canal as there is no showing that there are (sic) contusion in the canal?

A -

Since the woman is already married I cannot say that there was a penetration.

Q -

You are sure of that that there is no penetration?

A -

I am sure that there is a penetration.

Q -

In this opinion of yours, would it be 50% not sure and 50% sure, this is a capital offense probably the liberty and the guilt of the accused lies on your testimony.

A -

50% penetration and 50% no penetration" (TSN. August 1, 1990, pp. 8-9).

The mind cannot rest easy if we resolved against the accused such evidence as inconclusive as the testimony of the medical expert. In a criminal case, every doubt must be resolved in favor of the accused.[9]

Indeed, this Court cannot bring itself to believe that appellant, a man of twenty-eight years, employed force, threat and intimidation of such character and magnitude as to render complainant, a married woman of thirty-three years, utterly helpless to resist the assault on her virtue.

To sustain a conviction, the third principle in reviewing rape cases dictates that the prosecution evidence must stand or fall on its own merits and cannot draw strength from the weakness of the defense.[10] The version of the defense in the instant case is unarguably weak, but the prosecution has clearly and utterly failed to prove the guilt of appellant beyond reasonable doubt. The constitutional presumption of innocence still stands, and for this reason, appellant must be acquitted.

WHEREFORE, the decision of the Regional Trial Court Branch 18, Leyte in Criminal Case No. H-332 is

REVERSED and appellant is ACQUITTED on grounds of reasonable doubt of the crime of rape. The accused may be released unless he is being validly held on other legal charges.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo and Francisco, JJ., concur.

Davide, Jr., J, concurs in the result.

[1] Penned by Judge Vicente M. Aujero.

[2] Decision, p. 4; records, p. 177; Rollo, p. 23.

[3] 33 years old, married and resident of Brgy. Amagos, Bato, Leyte.

[4] People vs. Arnan, 224 SCRA 37 (June 30, 1993); People vs. Morre, 217 SCRA 219 (January 18, 1993); People vs. Casinillo, 213 SCRA 777 (September 11, 1992).

[5] People vs. Magpayo, 226 SCRA 13 (September 1, 1993).

[6] People vs. Martinez, 219 SCRA 502 (March 4, 1993); People vs. Nuñez, 208 SCRA 34 (April 10, 1992); People vs. Ramos, 167 SCRA 476 (November 18, 1988).

[7] People vs. Ganduma, 160 SCRA 799 (April 25, 1988); People vs. Royeras, 130 SCRA 259 (June 29, 1984); People vs. Bardaje, 99 SCRA 388 (August 29, 1980).

[8] People vs. Garciano, 150 SCRA 638 (June 17, 1987).

[9] People vs. Delimios, 105 Phil. 845 (May 29, 1959); United States vs. Reyes, 3 Phil. 3 (December 3, 1903).

[10] People vs. Tismo, 204 SCRA 535 (December 4, 1991); People vs. De los Reyes, 203 SCRA 707 (November 19, 1991); People vs. Bacdad, 196 SCRA 786 (May 8, 1991).

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