

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORBERTO IGDANES, ACCUSED-APPELLANT.*G.R. No. 105804. May 05, 1997*

Ponente: ROMERO, J.

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The Court is tasked anew to review on appeal a conviction for Rape, where accused-appellant Norberto Igdanes contends that complainant Freda Apatan's testimony is incredible and insufficient to overcome the constitutional presumption of innocence.

The facts leading to the conviction of Norberto Igdanes were related by his victim, Freda Apatan. The latter is a thirty-three year old mother of six. On July 17, 1990, at about eight o'clock in the morning, she was inside her house, seated with her back to the door while feeding her one-year old child powdered rice (lugaw). All of a sudden, someone embraced her from behind. She stood up in an effort to extricate herself and, looking back, saw accused-appellant Norberto Igdanes, a fifty-year old laborer with seven children who lived in the same sitio and barangay. She tried to push him away but he took out his gun and threatened to kill her with it if she did not yield to his lustful desires. Apatan cried that he would have to kill her first before she gives in. As Norberto Igdanes wrestled with her, she fought back and furiously resisted his aggressive advances until she fell on the floor. He then lay on top of her, pressing her body down with his. With his left hand holding the gun, he removed her underwear. She continued to struggle, pushing him and hitting him at random. The accused-appellant hastily unzipped his pants, inserted his sex organ into hers and succeeded in having sexual intercourse with her. She tried to scream for help but she could not summon her voice during those stressful moments. He stood up after being weakened by his ejaculation. Apatan beat him with a broom and cursed him before he could jump out of her house.

She immediately went to the fishpond where her husband was working, bringing along her two kids. There she related her sad tale of violent defilement to her husband. Together they reported it to Barangay Councilman Napoleon Blanco who advised them to bring the matter to the police, which they did. After going to the President Roxas Police Station, they proceeded to the Bailan District Hospital in Pontevedra, Capiz where Apatan submitted herself to a medical examination. Dr. Elmer Bucayan, resident physician in said hospital, found linear abrasions on Freda Apatan's right arm, forearm and neck, a contusion on her left thigh, and the presence of non-motile spermatozoa in her genitals.[1] He testified that her injuries could have been caused by the sliding of pointed objects on her skin and a blunt instrument, a fist or a knee. He added that the patient had torn underwear and was nervous as if afraid when examined.[2]

On October 22, 1991, Norberto Igdanes was charged before the Regional Trial Court of Roxas City with Rape, the information for which reads in part:

"That on or about July 17, 1990 at around 8:00 o'clock in the morning in Sitio Serwaga, Brgy. Solo, Pontevedra, Capiz, Philippines, the above-named accused wilfully and feloniously succeeded in having carnal knowledge of FRED A PATAN by means of force and intimidation without her consent and against her will.

The crime is aggravated by the use of a deadly weapon, namely, a gun, and dwelling."[3]

For his defense, Norberto Igdanes denies having raped Freda Apatan. His tale is as follows: On July 17, 1990 at about eight o'clock in the morning, he went to her house accompanied by one Hilario Crispulon, to collect payment for ten gantas of rice she owed him. The witness Crispulon was asked to stay at the balcony while Norberto Igdanes proceeded inside. Apatan placed her hand around his shoulder as she led him inside the house. After asking accused-appellant to sit with her on the floor, she embraced him and told him that she does not have money to pay him. She then kissed him thrice on his cheek. At this point, Norberto Igdanes claims that Apatan's nine-year old daughter surprised them and hurriedly ran downstairs shouting that she would tell her father.[4] The mother's order to the child to return went unheeded. She then allegedly advised accused-appellant to stay away in the meantime as she feared her husband's discovery of the incident. Her husband went to accused-appellant's house as the latter prepared to leave but Igdanes remained silent inside the house. At around ten o'clock in the morning of the same day, he left the place and stayed with his uncle, Florencio Igdanes at Barangay Duyo, Dao, Capiz. It was upon his return several months later, that he was arrested to face the charge of rape.

Hilario Crispulon, 74 years old, testified that he had sold on credit ten gantas of rice to Norberto Igdanes and that the latter sought to collect payment therefor on July 17, 1990 from Freda Apatan when he (Crispulon) visited Igdanes for payment. From the balcony he saw Freda Apatan embrace and kiss Norberto Igdanes.[5]

Norberto Igdanes claimed to have been romantically involved with Freda Apatan. On July 11, 1990, he visited her to collect payment for a debt she owed him but the latter had no money. Instead she gave him a love letter which also instructed him to come back the succeeding Friday. Two days later, he did go back to her house. As they met on the staircase, she asked him for some money. She gave the five pesos he gave to her children, instructing them to buy some bread with it, after which she led him to the sala where they kissed and caressed each other. Upon hearing the children approaching, he asked permission from her to go home. On July 14, 1990 at about two o'clock in the afternoon, accused-appellant was asleep when he suddenly felt someone touch his forehead. Thereupon, he opened his eyes and saw Freda Apatan sitting beside him. She gave him another letter. After reading it, they agreed to "enjoy themselves." Nevertheless, their sexual congress was not consummated due to the arrival of his wife, who saw accused-appellant on top of Freda Apatan. The latter attempted to run but Norberto Igdanes' wife caught her by the hair, whereupon complainant embraced her and begged for forgiveness. This was corroborated by his wife, Merlita Igdanes.[6]

Another witness for the defense named Remedios Dacibar, who lived in the same area as the parties, testified that on August 15, 1990 she followed her husband to Freda Apatan's house. After five minutes, she entered and surprised Apatan and her husband in the act of sexual intercourse. Angered, she hit her husband with a blunt-edged bolo and dragged complainant away.[7]

Norberto Igdanes' defense presentations proved unavailing. In a carefully-crafted decision dated April 29, 1992, the Regional Trial Court rendered its decision convicting him, with the following dispositive portion:

"WHEREFORE, the Court finds the accused, Norberto Igdanes, guilty beyond reasonable doubt for the crime of rape penalized under Art. 335, Revised Penal Code as amended by Republic Act Nos. 2632 and 4111 and hereby sentence the accused to suffer the penalty of Reclusion Perpetua and to indemnify the complainant, Freda Apatan, the amount of P40,000.

The accused shall remain in jail and shall not be subject to any bail bond pending the finality of the judgment hereof

Costs against the accused."[8]

After briefs for accused-appellant and the People were filed, the Court proceeded to meticulously examine the evidence on record and the issues raised by the parties. We find nothing on record which should justify a reversal of the trial court's adverse verdict.

First, the Court notes the trial court's observation that Freda Apatan's testimony

"was related with all sincerity and candor expected of a woman recounting the terrible experience which had befallen her. Her straightforward account of the events which occurred before, during and after the rape was consistent even during cross-examination, an obvious proof of the veracity of her declarations. The court does not believe the complainant concocted the rape charge as a cover-up because her child saw the accused kissed her. There is no tint of untruth and unnaturalness in the testimony of the complainant. The complainant testified in a straightforward manner and her answers were logical and natural x x x." [9]

We reiterate the doctrine that the lower court is in the best position to observe the deportment of the complainant, as well as of the accused-appellant and their witnesses who testified in open court. Hence, the trial court, vis-a-vis appellate courts, is better-situated to decide the question of credibility. [10] The conclusiveness of and the great weight placed on the factual findings of the trial court are well-settled principles enunciated in numerous cases decided by this Court, subject only to certain exceptions. [11]

Accused-appellant argues in his brief that the degree of resistance put up by complainant Freda Apatan conflicts with her declaration that she would rather die first before she gives in to his lustful desires. He maintains that she could have done many things with her free hand but she chose not to "because she also enjoyed what accused-appellant was doing to her." [12] The Court is not persuaded. Complainant testified that she furiously pushed him away and struggled to frustrate his attempts to have carnal knowledge with her. The degree of resistance by a rape victim will vary according to the physical characteristics of the parties and the circumstances they find themselves in. Evidence of resistance is examined together with other facts presented to assist in the court's assessment of the case. Moreover, it is not necessary that the victim should have resisted unto death. [13] In the case at bar, it suffices that Freda Apatan's behavior appears consistent with her vehement refusal to have sex with accused-appellant. Equally plausible is the fact that the abrasions on her arm and neck and bruises on her thigh were caused by the force he employed to subdue her. It must be borne in mind that Norberto Igdañes threatened her with a gun and that, being a laborer, he was presumably much stronger than she.

He likewise produced two love letters to prove their romantic dalliance. Faced with the private complainant's positive identification of accused-appellant and her clear narration of events, we agree with the trial court that said letters cannot be credited as material proof that she was not raped. No competent proof was adduced to show that the letters, allegedly given personally to Norberto Igdañes on July 11, 1990 and July 13, 1990, were written by Freda Apatan. More importantly, even if the parties were intimately related, though evidence on record has not sufficiently established this fact, the crime of rape can still be committed. [14]

The trial court disregarded the testimony of Remedios Dacibar after she admitted, on cross-examination, that counsel for accused-appellant had told her what to say. [15] This witness testified having surprised her husband with private complainant in a very compromising position on August 15, 1990. She was presented in an attempt to adduce proof that private complainant is unchaste and a woman of ill-repute. This move fails to dissuade the Court from affirming the conviction. The veracity of Remedios Dacibar's testimony was not confirmed by the trial court which received said evidence. The incident she related happened nearly one month after the act complained of herein. The probability that private complainant had adulterous relations with accused-appellant cannot be inferred. In the past, the Court has ruled that although a woman is viewed by the public as unchaste or impure, she can still be raped for she is still free to refuse a man's lustful advances. [16]

Accused-appellant raised the issue of the discrepancy of the entry in the police blotter and the crime charged. Entry No. 6456 of the President Roxas Police Station made on July 17, 1990 states that Freda Apatan "reported to this St. alleging that on or about 170800 July 90, he was attempt (sic) to rape in her residence by Norberto Igdaanes also of same place. Reportee further alleged that he pointed also a revolver. x x x" Accused-appellant claims that this entry shows that private complainant's report that there was merely an attempt to rape her, cast doubt upon the veracity of her rape charge. The Court agrees with the trial court that afore-quoted blotter entry is mere prima facie proof and not conclusive proof of the fact stated therein. It must also be borne in mind that the entry was translated from the dialect and is even grammatically imprecise. Thus, it cannot be accorded the weight of convincing proof.

One other factor supporting accused-appellant's conviction is his flight which was considered as an indication of guilt.[17] The Court confirms this conclusion. At about ten o'clock in the morning of July 17, 1990, two hours after the alleged rape of Freda Apatan took place, Norberto Igdaanes admittedly left his home to stay with an uncle in Dau, Capiz until April 1991. No justifiable reason exists for his hasty and untimely departure if it were true that private complainant's daughter merely saw them kissing. Or he should have left soon after his wife chanced upon them as they were in the act of having coitus three days earlier. That accused-appellant initially testified that he returned to his home after ten months of living away to answer charges that might be brought against him shows that he was aware of having committed some wrongdoing. Subsequently, he stated that he was not afraid of any charge that may be filed against him but was afraid that Freda Apatan's husband might kill him.[18] It is highly unlikely that a husband would kill a man for the mere act of kissing his wife.

There are added considerations which render Freda Apatan's fabrication of a rape charge implausible. Being a married woman with six children, the eldest of whom was then sixteen years old and the youngest a year old, it was unlikely for her to place herself and her family on public trial for rape where she would be subject to suspicion, morbid curiosity, malicious imputations and close scrutiny even of her personal life and character, not to speak of the humiliation and scandal, if the charge proves to be untrue.[19] The man she accused was also married and the father of seven. It strains credulity for her to have fabricated such a serious accusation resulting in the incarceration of a neighbor with a wife and seven children.

The Court has found no motive on the part of complainant to concoct such a false charge. After examining the testimonies of both accused-appellant and his accuser, we find the former's story a tale unworthy of credence. We are not persuaded by accused-appellant's story, viewed by the trial court as "woven with all the cutfulness of imagination of a cheap paperback" which appeared "contrived and improbable." [20] On the other hand, complainant's behavior immediately after the incident lends credence to her allegations. She lost no time in reporting the matter to her husband who was then working in a fishpond and seeking the aid of a barangay councilman, as well as of the police.

All told, the conviction of Norberto Igdaanes stands.

At the time the crime was committed, on July 17, 1990, Article 335 of the Revised Penal Code mandated that rape committed with a deadly weapon shall be penalized with reclusion perpetua to death. Under Article 63 of the Revised Penal Code, when one aggravating circumstance is present, the greater penalty shall be applied. However, with the constitutional prohibition against the imposition of capital punishment, the appreciation of dwelling as an aggravating circumstance will not alter the imposable penalty which is reclusion perpetua. The indemnity awarded by the trial court, in the amount of P40,000.00, should however, be increased to P50,000.00 in accordance with prevailing jurisprudence.[21]

WHEREFORE, the instant appeal is DISMISSED. The decision of the Regional Trial Court under review is

hereby AFFIRMED with the modification that indemnity to be paid by accused-appellant Norberto Igdanes to private complainant Freda Apatan is increased to P50,000.00.

Costs against appellant.

SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] Medical Certificate issued July 18, 1990, Records, p. 8.

[2] TSN, January 24, 1992, pp. 4-6.

[3] Information filed by Romeo S. Fernandez, Provincial Prosecutor; Criminal Case No. C-3478, Regional Trial Court of Roxas City, Branch 15. Rollo, p. 4.

[4] The TSN translation reads: "Mother, I will report you to my father."

[5] TSN, February 11, 1992, pp. 3-5.

[6] TSN, March 2, 1992.

[7] TSN, March 4, 1992, pp. 4-6.

[8] Decision of the Regional Trial Court of Roxas City, Branch 15 in Criminal Case No. 3478, *People v. Norberto Igdanes*, penned by Judge David A. Alfeche, Jr. Rollo, pp. 13-27.

[9] Decision, pages 9-10, Rollo, pp. 73-74.

[10] *People v. Vallena*, 244 SCRA 685 (1995); *People v. Gerones*, 193 SCRA 263 (1991).

[11] *People v. Catoltol, Sr.*, G.R. No. 122359, November 28, 1996; *De los Santos v. Republic*, 96 Phil. 577 (1955); *Reyes v. CA*, G.R. No. 110207, July 11, 1996.

[12] Appellant's Brief, p. 10. Rollo, p. 62.

[13] *People v. Padre-e*, 249 SCRA 422 (1995).

[14] *People v. Laray*, 253 SCRA 654 (1996).

[15] TSN, March 4, 1992, p. 16.

[16] *People v. Lamberto*, 142 SCRA 685 (1986) citing *People v. Blance*, 45 Phil. 113 (1923).

[17] *People v. Javier*, 229 SCRA 581 (1994).

[18] TSN, March 4, 1992, pp. 45-46.

[19] *People v. Cañada*, 253 SCRA 277 (1996); *People v. Arengo*, 181 SCRA 344 (1990).

[20] Decision, p. 14, Rollo, p. 26.

[21] *People v. Laray*, *supra*.

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