

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO DIO Y BOTABARA, DEFENDANT-APPELLANT.

G.R. No. 106493. September 08, 1993

Ponente: MELO, J.

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MELO, J.:

For non-payment of the meager debt of P100.00, accused-appellant Ernesto Dio would have Us believe that the alleged victim of a violacion de una mujer voluntarily offered her body as payment therefor on October 28, 1990. To bolster this theory of consent to the sexual conjugation, accused-appellant claims in the appeal before Us that he and Natividad Bañal are lovers.

Thus, accused-appellant finds it ironic to have been charged with rape supposedly consummated in this manner:

That on or about the 28th day of October, 1990 at more or less 9:00 o'clock in the morning, at Barangay Bonga--Lower, Municipality of Bacacay, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with the use of bladed weapon, with lewd design and intent to lay with NATIVIDAD B. BANAL, a married woman, by means of force, threats and intimidation did then and there willfully and feloniously have sexual intercourse or carnal knowledge with the aforesaid Natividad B. Bañal against her will and consent, to her damage and prejudice.

(p. 1, Rollo)

The narration of the factual backdrop by the Office of the Solicitor General supported as it is by the evidentiary record, is hereby adopted, to wit:

On October 28, 1990 at around 9:00 o'clock in the morning in Lower Bonga, Bacacay, Albay, complainant Natividad Bañal was tethering the carabao in the place where it wallowed in the mud about sixty (60) meters away from her house. The area was filled with coconuts and anahaw trees typical of a provincial setting (pp. 6-7, TSN, Jan. 27, 1992).

While she was watching the carabao, appellant suddenly appeared from behind her and immediately choked her neck. He then removed his left hand and placed it on her mouth. With the use of his right hand, he got a knife and poked it on her neck. She was not able to scream as she was overwhelmed by fear. He then dragged her to an area where there were so many anahaw trees. Upon reaching there, he pushed her down and pinned her with his body. He then lifted her skirt and tore the panty she was wearing. With the knife still poked at her neck, he succeeded in raping her in a kneeling position. She tried in vain to push him away but she was overpowered by him (pp. 7-9, TSN, Ibid.).

After complainant was raped, she was threatened by appellant not to report the matter to anyone otherwise he will kill all the members of her family. He then walked away casually (p. 11, TSN, Ibid.)

After appellant had gone away, complainant went to the house of her parents-in-law. After arriving thereat, she was informed that her husband had already left for the cockpit. She then went home without telling them of the incident (pp. 11-12, TSN, Ibid.).

When complainant's husband arrived at around 4:00 o'clock in the afternoon of the same day, she told him of the incident. Her husband became furious but they could not decide whether or not they should report the matter to the police for fear of any retaliation appellant might make (p. 12, TSN, Ibid.).

Finally, on November 29, 1990 they went to report the matter to the police. Complainant also went to the Municipal Health Office to have a physical check-up. Unfortunately, the doctor was not around and a staff member of the doctor told her that a medical examination was not necessary anymore since she was already a married woman (pp. 13-14, TSN, Ibid.).

Appellant was subsequently charged with the crime of Rape.

(pp. 71-74, Rollo.)

The defense, on the other hand, came up with its own diametrically opposed version premised on denial, alibi, and the married woman's acquiescence:

Accused Ernesto Dio denied having anything to do with the crime attributed to him. He testified that on October 28, 1990, he was at home making mats. He and Natividad Bañal were lovers. Their relationship started on July 22, 1990 when Natividad borrowed money from him. On July 27, 1990, Natividad again borrowed money from him. He then told her: "You have not paid yet the previous loan and again you are borrowing money from me." Natividad answered him that she would instead offer herself to him. On several occasions, he and Natividad had sexual intercourse. This was repeated for the last time on October 20, 1990 at the anahaw plantation. While there, Natividad told him that her husband harmed her. Natividad then proposed to him that they better elope. He did not accede to such request prompting her to inform her husband about their relationship. Hence, the crime of rape filed against him. (TSN, April 3, 1992, pp. 3-8).

(pp. 36-37, Rollo.)

Efforts exerted below by accused-appellant to secure exoneration from the charge failed to draw the desired reaction from the trial judge who opined, in the course of pronouncing accused-appellant's culpability for the misdeed, that the mass of evidence presented by the People is enough to negate accused-appellant's profession of innocence.

Accused-appellant now impugns the trial court's verdict by arguing that the court erred:

I

. . . IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE THE FACT THAT COMPLAINANT DID NOT OFFER ANY TENACIOUS RESISTANCE AND THAT SHE DID NOT EXERT ANY EFFORT TO HAVE HERSELF EXAMINED BY A PHYSICIAN.

II

. . . IN GIVING CREDENCE TO THE TESTIMONY OF THE COMPLAINANT AND IN NOT GIVING EVIDENTIARY WEIGHT TO THE EVIDENCE ADDUCED BY THE ACCUSED-APPELLANT.

III

. . . IN NOT ACQUITTING ACCUSED-APPELLANT ON THE GROUND THAT HIS GUILT WAS NOT PROVED BEYOND REASONABLE DOUBT.

(p. 34, Rollo.)

To the general query of whether accused-appellant's supplication for exculpation is legally acceptable amidst the

factual ambiance of the case at bar, we recall and re-echo the oft-repeated principle in adjective law that the Court has almost invariably placed great reliance on the findings of trial courts based on facts directly available to them as disclosed by the parties during trial. The findings of trial courts, are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any showing that the court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which, if considered, would have affected the result of the case (*People vs. Abuyan, Jr.* 211 SCRA 662 [1992]). It is this maxim which precisely precludes us from re-evaluating factual matters which spring from judgment on the credibility of witnesses, inasmuch as these points are better addressed to the trial judge for his resolution.

Even then, and if only to rectify accused-appellant's misimpression, We nonetheless have to stress that Natividad Bañal's story inspires belief for it is highly improbable for her, a married woman with a young child, to expose herself to humiliation and embarrassment, if her accusations were not true (*People vs. Avila*, 192 SCRA 635 [1990]). This was graphically, if a bit ungrammatically, depicted by the court a quo in its decision, to wit:

It is not an easy and comfortable act to face authorities and report in details, divulge and demonstrate of a heinous crime - rape, committed on oneself. This was done so by Natividad Bañal, the victim, bravely in front of her husband, authorities, investigators and the public. She was attacked, dragged and savagely raped by the accused herein, a 'de sangre' of that sort, in an uncalled for portion of the earth. After the savage act, the accused resorted to threats for the victim not to squeal the incident. The filthy moment has to be tidied up, hence, this redress of grievances the victim has to hold on.

(p. 19, Rollo.)

Nor does the failure of complainant to report the incident immediately detract from her credibility, her hesitation being attributable to accused-appellant's death threats, not to speak of the natural reluctance of a woman having to admit in public her having been raped (*People vs. Grefiel*, 215 SCRA 596 [1992]).

Accused-appellant invokes alibi by saying that on October 28, 1990, he was then at home making mats.

This Court has consistently ruled that alibi is a weak defense because it can easily be fabricated or concocted. In order for this form of exculpation to prosper, it is not enough that the accused proves that he was somewhere else when the crime was committed but it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission (*People vs. Bernardo, et. al.*, G.R. No. 97393, March 17, 1993, citing *People vs. Caday*, 208 SCRA 781, [1992]). Here, accused-appellant has not shown by clear and convincing evidence that it was impossible for him to be at the scene of the crime, considering that, by his own admission, his house was only one kilometer away from Natividad's house which, in turn, was more or less 60 meters from the place where the alleged rape was committed. Furthermore, accused-appellant's denial cannot prevail over his positive identification by Natividad as her rapist.

Accused-appellant contends that complainant did not exert sufficient resistance to his sexual advances which primarily shows that the sexual act was voluntary. Verily, accused-appellant himself admits that Natividad tried to resist his lewd advances, only, so he argues, this resistance is not sufficient. This argument is bereft of merit for in rape cases it is not necessary that the victim should have resisted unto death (*People vs. Aquino*, 197 SCRA 578, [1991]). And, death was not too far away from Natividad, pointed as the knife was at her jugular. This circumstance constituted indeed sufficient threat or intimidation to make her submit to accused-appellant's sexual assault for fear of her life. (*People vs. Olivar*, 215 SCRA 759 [1992]).

Accused-appellant also argues that the crime ascribed against him is bereft of credence because Natividad failed (a) to exert efforts to have herself medically examined and (b) to present in court her torn pair of panties.

A medical examination is not an indispensable element in a prosecution for rape (*People vs. Saldivia*, 203 SCRA 461 [1991]). Thus, the absence thereof will not by itself result in accused-appellant's exoneration because a judgment against an accused depends upon the evidence offered and as long as such evidence convinces the court of the guilt of the accused, a conviction therefor is proper (*People vs. Orteza*, 116 Phil. 424 [1992]; 3 Aquino, Revised Penal Code, 1976 ed., p. 1701). In fact, the lack of medical examination on Natividad cannot be ascribed to any negligence on her part. This matter was adequately explained by her during her cross examination, to wit:

Q. - You did not submit any medical certificates to show if you had injuries sustained in your vagina or any parts of your body, is it not?

A. - We went to the Municipal Health Office but we were not able to see the doctor. But the woman there told us that a medical certificate is no longer needed since I am already married.

(p. 14, TSN, Jan. 27, 1992.)

Too, the non-presentation of complainant's torn pair of panties is not fatal to the prosecution's case inasmuch as Natividad herself narrated in detail and in a straightforward manner how accused-appellant was able to rape her, and despite the rigorous cross-examination by accused-appellant's counsel, she remained consistent in her testimony.

As a last ditch effort, accused-appellant concocted a love-affair script to the effect that he and Natividad were lovers, claiming that their amorous relationship started sometime on July 22, 1990. Such defense cannot be accorded any credence (*People vs. Sarol*, 198 SCRA 286, [1991]) for if complainant and accused-appellant had in fact been lovers, complainant would not have immediately reported the matter to her husband, such demeanor being anathema to an illicit affair (*People vs. Sarol*, supra.) Moreover, it is unthinkable for complainant, who has some means for livelihood, to borrow money from accused-appellant who was struggling for survival together with his nine children and wife. Equally unacceptable is accused-appellant's thesis that Natividad was a willing participant to the sexual congress as payment for the petty loan of P100.00, inasmuch as there was no indication that Natividad is a barrio temptress who will go to the extent of giving her body to every creditor upon demand for liquidation of her debt.

In view of the foregoing considerations, We find that the court a quo did not err in finding accused-appellant guilty beyond reasonable doubt of the crime of rape. However, in addition to the imprisonment sentence imposed, accused-appellant should indemnify the offended party in the sum of P50,000.00 (*People vs. Alegado*, 201 SCRA 37 [1991]).

WHEREFORE, the decision appealed from is hereby AFFIRMED, with the modification that accused-appellant is ordered to pay the sum of Thirty Thousand Pesos (P30,000.00) as indemnity to the victim, with costs against accused-appellant.

SO ORDERED.

Feliciano, Bidin, Romero, and Vitug, JJ., concur.

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