

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AQUILIO ACABO, ACCUSED-APPELLANT.

G.R. No. 106977. July 17, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a case of rape. Appellant Aquilio Acabo was found "guilty beyond reasonable doubt of having committed the crime of rape as defined in Article 335 (1) of the Revised Penal Code x x x upon the person of Jeany Polinar,"[1] the private complainant, and sentenced to suffer an imprisonment of reclusion perpetua. Appellant was also "ordered to pay unto the offended party the sum of P30,000.00 as damages",[2] and costs. Appellant is now before us asking for the reversal of his conviction based on the following correlated errors allegedly committed by the trial court, to wit:

"I

THE TRIAL COURT ERRED IN FINDING THAT ACCUSED HAD SEXUAL INTERCOURSE WITH JENNY POLINAR ON FEBRUARY 25, 1990;

II

THE TRIAL COURT ERRED IN HOLDING THAT SAID SEXUAL INTERCOURSE WAS AGAINST THE WILL OF JENNY POLINAR;

III

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED."

Hereunder is the recital of facts as summarized by the trial court[3] in its decision and duly supported by the evidence on record:

"The victim Jeany Polinar is a 20 years old maiden whose story is as follows: She is a layworker of the Parish of Olutanga. At about 11:00 o'clock in the morning of February 25, 1990, which was a Sunday, after accomplishing her work at the church, she started to go home to barangay Cawilan, of the municipality of Talusan. She had to pass by the house of her elder married sister Rosie Acabo at barangay Fama, municipality of Olutanga. Dropping in at the house of her sister, she had met the accused Aquilio Acabo, the husband of her sister, alone in the house. She had asked her brother-in-law where her manang Rosie was, and answered by Aquilio Acabo that her Manang Rosie was at the tank washing the clothes. She then proceeded to empty the contents of the bag she was carrying and transferring the same to another bag. While in the process of bending and emptying her bag, the accused held her at the nape and tried to drag her into a room. When she attempted to shout, the accused covered her mouth with the other hand. She tried to struggle to free herself, but the accused boxed her at the epigastric region of her breast-below the sternum. She had stopped struggling and when the accused had loosened his hold upon her, she stood up and darted to the window and tried to jump down. But the accused was able to take hold of her upper arm and hair, and pulled her back into the room. Then the accused boxed both her left and right thighs, and begun removing the square pants and panties that victim was wearing. The accused had pinned down Jeany Polinar with his body, while removing his short pants. After having removed his pants, the accused was able to consummate the sexual assault lying on top of

the victim. She did not know how long the accused had lain on top of her performing the sexual act because she was in pain caused by the sexual assault. After a while the accused stood up and went out then returned with a scythe, admonishing the victim from telling anybody about the incident and threatening her with death if she would tell anybody. Jeany had pleaded and convinced the accused that she will not tell anybody, and was able to get out of the house. She proceeded to go home but on the way she met her mother and sister Rosie, and immediately reported the matter to her mother and sister Rosie, the wife of the accused. Her mother had proceeded to the house of the accused and confronted him. The accused merely remained silent. The following day, February 26, 1990, accompanied by her mother and uncle, they went to the hospital at Suba-Nipa (Poblacion of Olutanga) and submitted herself to medical examination. Subsequently she filed the complaint for Rape against accused Aquilio Acabo.

"The victim Jeany Polinar was medically examined the following day, February 26, 1990, at 11:00 o'clock A.M., or 23 hours after the incident. She had slight laceration on the opening of the vagina, which was still bleeding, and that she had no more hymen. So, the laceration was on the opening of the vagina just below the vulva, and in the opinion of Dr. Franklin Macalua, she was no longer a virgin at the time of the supposed rape. He could not say as to the presence of sperms in the vagina of the victim as the Medical Technologist was absent at the time of the examination and no laboratory test was taken to determine its presence." [4]

[Note: "Sic" was not inserted in order not to clutter the narration.]

In his first assignment of error, appellant faults the trial court for ignoring the alleged existence of an illicit relationship between him and the complainant which the appellant emphasizes was corroborated by the testimony of the complainant's sister and appellant's wife, Rosie Acabo. Appellant insists that no sexual contact occurred on February 25, 1990, for complainant was then having her menstruation supposedly evidenced by complainant's three bloodstained panties. Due to complainant's menstruation, appellant claims that he merely contented himself in kissing, hugging and inserting his forefinger inside complainants' private organ which purportedly caused the laceration at its opening. The other injuries sustained by the complainant, appellant explains, were caused not by the application of force, violence or intimidation upon her person, but by the complainant's jumping out of the window and, subsequently, by appellant's pulling her back inside the room on which occasion her body abraded against the windowsill.

We are not persuaded. The existence of an illicit relationship between the appellant and the complainant lacks factual basis as it is founded on appellant's bare and self serving testimony unsupported by any letter, notes or other tokens.[5] The corroborative testimony of Rosie Acabo is not reliable since she has no personal knowledge of the existence of the unholy relationship. Her motive in testifying is suspect. Indeed, records disclose that just after complainant divulged to her parents and to her sister Rosie the ordeal she suffered from the hands of the appellant, it was Rosie herself who confronted the appellant about the incident.[6] In addition, Rosie helped the complainant in reporting the incident to the police authorities and accompanied her to the doctor's clinic for medical examination.[7] It appears, then, that appellant's defense is more of a concoction than real. At any rate, the existence of an illicit relationship, which was shown to be otherwise, does not preclude the commission of rape nor exonerate the appellant from the charge. What is important is that the elements necessary for the commission of the crime have been duly proved which in this case were persuasively established beyond a shadow of doubt.

Similarly, appellant's claim that complainant was having her menstruation on the day of the incident is devoid of merit for lack of clear and positive evidence. The presence of three blood stained panties, the ownership of which was not even positively established, does not sufficiently prove complainant's menstruation at the time. The undisputed fact is that the medical doctor who conducted the physical and internal examinations of the complainant testified that the bleeding of complainant's private organ was not due to menstruation, but due to her

vaginal laceration.[8] Moreover, the presence or absence of menstruation does not negate the crime of rape nor render its execution impossible. Lust is no respecter of the victim's condition.

Appellant's explanation that complainant's injuries were the result of his pulling her up from the ground to the room via the window is also unmeritorious. Records disclose that complainant suffered the following:

"FINDINGS:

EDEMA, ERYTHEMA OF RIGHT NECK, BRUISES, RIGHT AND LEFT UPPER EXTREMITIES
HEMATOMA, RIGHT AND LEFT THIGHS

INTERNAL EXAMINATION:

Presence of vaginal lacerations - with bleeding

Admits one finger

Vaginal swab - for laboratory examination for spermatozoa"[9]

injuries which consistently support complainant's testimony that appellant held her at the rape of her neck and boxed her during the incident: first, on her upper abdomen and second, on her left and right thighs that caused her to stumble.[10] Appellant's denial cannot prevail over complainant's direct, positive and categorical assertion which, we note, rings with truth. Denial, as a settled rule, is inherently a weak defense which can not outweigh complainant's positive testimony.[11] Thus, appellant's insistence in his reply brief[12] that his testimony was never rebutted is not worthy of attention since rebuttal is not even needed. Courts give more credence to the testimony of witnesses for the prosecution which is positive in nature than the negative evidence of the appellant and his witness.[13]

In his second assigned error, appellant postulates that even assuming that sexual intercourse occurred on February 25, 1990, it, however, was with complainant's consent as "the offended party 'voluntarily entered the sex drama with gusto without being forced to do so, x x x.'"[14] To bolster this contention, appellant claims that complainant's behavior at the height of the sexual assault on her person did not conform to the normal course of conduct as she failed to cry or shout for help. Appellant maintains that the complainant "must have entertained the belief that the niece of the [appellant] saw them inside the house in a scandalous circumstance and having this in mind she must have entertained the idea that Jocelyn Arellano, [the appellant's niece] will report the matter to her sister and mother." [15] Thus, the filing of the complaint to pre-empt the revelation of their secret and to save herself from humiliation.

Appellant's insistence that the complainant consented to the sexual assault deserves scant consideration. Complainant's failure to shout did not make voluntary complainant's submission to the criminal acts of the appellant.[16] Besides, appellant covered her mouth most of the time and due to his incessant harassment she was overwhelmed by fear. More importantly, we note that complainant immediately reported the detestable crime moments after its occurrence to her parents and sister without hesitation and feeling of embarrassment. The following day, she had herself medically examined. Two days later, she filed a complaint before the court. This conduct distinctly shows complainant's unwillingness and deep resentment over her ordeal and eloquently disproves appellant's claim that the charge was merely fabricated to save the complainant from humiliation. A victim of rape will not come out in the open if her motive was not to obtain justice.[17] Apropos is the trial court's incisive observation which we quote with approval:

"The accused tried to synchronize his testimony with that of the offended party by admitting that Jeany Polinar did try to jump out of the open window, but was able to pull her back into the bedroom justifying the action of Jeany Polinar as an attempt to escape from his carnal lust, but for fear of being discovered and reported to her elder sister, "Nang Rosie." Considering that the window sill was just about six feet from the ground, why did

the accused not just let her go, instead of pulling her back into the room? Was he not afraid or apprehensive that the matter may be reported to his wife Rosie? The lustful intent of the accused in trying to consummate the sexual act upon Jeany Polinar is clearly shown by his testimony as follows:

"COURT: (Clarifying questions)

Q-

You testified a while ago that she did not want to have sexual intercourse with you because she was menstruating and you tried to insert your forefinger and you really found out that she was menstruating, is that correct?

A-

Yes, sir.

Q-

The question of the Court is, at that moment when you were inserting your forefinger, did you still have your pants on?

A-

Yes, sir.

Q-

So, after noticing that she was menstruating why did you still try to stand up and remove your pants?

A-

Because I really wanted to have sexual intercourse during that time.

Q-

Even if she was menstruating, you still wanted to have sexual intercourse with her?

A-

I was only stopped when I was kicked by her." (Tsn, accused Aquilio Acabo, p. 12, Aug. 20, 1991)

"The accused had staggered back to the wall and the complainant stood up and tried to jump out of the window. Unfortunately the accused had regained balance and had dragged the complainant into the room. At this instant, there is very little for the imagination to conjecture what will happen next, unless prevented by forces or events not within the control of the accused." [18]

[Note: "Sic" was not inserted in order not to clutter the account]

Furthermore, the testimonies of the complainant's mother, quoted below, and sister, a defense witness at that, corroborate her account that she was sexually abused. Thus:

"ATTY. LUZA:

x x x x x x x x

Q-

Do you remember if your daughter, the victim in this case, approached you in that particular month and year?

A-

Yes, sir.

Q-

What did she tell you about?

A-

She told me that she was raped by Aquilio Acabo.

x x x x x x x x

COURT:

Q-

Did she describe to you how she was raped?

A-

Yes, sir.

COURT:

Proceed.

ATTY. LUZA:

Q-

Tell the Court how she described it to you?

A-

I saw that there were bruises on her body.

Q-

What part of her body where there were bruises?

A-

Witness indicating at the back of her lap, both arms, and both thighs.

Q-

Were there other injuries that you saw?

A-

She was very weak.

ATTY. LUZA:

Q-

You mentioned Aquilio Acabo, do you have any relation with Aquilio Acabo?

A-

My son-in-law.

x x x x x x x x

Q-

Were you alone when your daughter tell you that she was raped by Aquilio Acabo?

A-

We the 3 of us.

Q-

Who were those 3 together with you?

A-

The wife of Aquilio Acabo, Rosie and my husband.

Q-

Do you have any relation with this person you mentioned Rosie?

A-

My daughter.

x x x x x x x x

Q-

Now when your daughter told you together with your daughter Rosie and your husband, what was your reaction then?

A-

We tried to go over the evidence.

ATTY. LUZA:

Q-

What do you mean by this, will you please explain to the Court?

A-

I together with my husband and the wife of the accused went to the house.

Q-

Whose house by the way Mrs. witness?

A-

The house of Rosie Acabo.

x x x x x x x x

Q-

When you reached there what happened?

A-

We saw the evidence from the appearance of Aquilio that he was perspiring profusely.

Q-

Did you not ask Aquilio Acabo about the alleged rape?

ATTY. BABIERA:

Leading, we object.

COURT:

Witness may answer.

WITNESS:

A-

We asked him.

ATTY. LUZA:

Q-

What was the answer of Aquilio Acabo?

A-

He said he will go away because he was ashamed.

Q-

When this Aquilio Acabo uttered those words was his wife present?

A-

Yes, sir.

x x x x x x x x

Q-

When the accused Aquilio Acabo told you that he will go away, what was your answer?

A-

I was not able to do anything. I just go home because I was afraid of the actuation.

Q-

Why were you afraid?

A-

Because he was very angry. (isug)." [19]

[Note: "Sic" was not inserted in order not to clutter the testimony]

And Rosie Acabo's testimony cited and assayed by the trial court in its decision as follows:

"Atty. Luza, Private Prosecutor (Cross)

Q-

On February 25, 1990, at 11:45 in the morning, Mrs. Witness, have you met the victim in this case or your younger sister? Was there a chance you met her?

A-

I met her.

Q-

And that when you met her, is it not a fact that she told you she was raped by your husband?

A-

She did not tell me she was raped. She only told me that something happened between them.

At this moment Rosie Acabo was with her father and mother.

Q-

When you met your younger sister, she was crying, Mrs. Witness?

A-

It is true that she was crying.

Q-

And because she was crying, you went immediately to your house in order to confront your husband, is that also correct, together with your mother?

A-

Yes, that's true.

Q-

And in fact, your mother asked your husband in connection with the alleged rape of your younger sister, is it not Mrs. Witness?

A-

Yes, she asked but my husband did not say anything.

Q-

And when your mother uttered those words you were also present?

A-

Yes, Sir.

Q-

Have you not also confronted your husband, Mrs. Witness?

A-

I confronted him.

Q-

And he denied that he raped your sister?

A-

He did not say he raped my sister, but according to him it was their mutual agreement." (Tsn. pp. 12-13, Mrs. Rosie Acabo, Jan. 15, 1991)

Atty. Luza:

Q-

Mrs. Witness, I understand that on February 26, one day after the incident you accompanied your younger sister to a doctor, is that correct?

A-

Yes, sir.

Q-

And that your purpose in going to the doctor is in order to get a medical certificate relative to the injuries sustained by your sister, is that correct?

A-

Yes, Sir." (Tsn., p. 10, Rosie Acabo, *ibid.*)

From the above-quoted testimony of the defense witness, the wife of the accused, it is crystal clear that the carnal assault on the person of the offended party was without her consent nor acquiescence, nor agreement with the accused, for if it were so, she would not have reported or breathe a word about the matter to the wife of her lover, nor her parents, at so proximate a time it happened for no one would have been any wiser as to know what happened between her and the accused. On the other hand, the very act of reporting the incident the soonest possible time to the parties closely concern with their family relationship, with tears freely shed, shows her deep resentment at the act perpetrated against her by the accused."^[20]

[Note: "Sic" was not inserted in order not to clutter the account]

In the final analysis, appellant's array of defenses hinge on the credibility of the witnesses. His tale with respect to the incident was not given credence by the trial judge who, unlike us, is in a better position to observe the demeanor of the witnesses for the prosecution and defense and their manner of testifying in court. It is a well entrenched rule that the findings of the trial court on the matter of credibility of the witnesses are accorded respect and conclusive effect by the appellate courts and are not disturbed on appeal^[21] in the absence of a clear showing that the trial court overlooked, or misunderstood material facts or circumstances of weight and value which if considered might alter appellant's conviction which is patently absent in this case.

Lastly, in a vain attempt to have her husband exonerated Rosie Acabo through a letter invites the Court's attention to an affidavit of desistance dated November 16, 1993, executed by the complainant's mother stressing that the appellant has already been pardoned. The affidavit, we note, is of no import. Under the law,^[22] the pardon to justify the dismissal of the complaint should have been made prior to the institution of the criminal action by no less than the offended party herself as she is of legal age and not otherwise incapacitated.^[23] Further, retractions are generally unreliable and are looked upon with considerable disfavor by the courts.^[24]

WHEREFORE, finding that the guilt of the appellant has been proven beyond reasonable doubt the decision

appealed from is hereby AFFIRMED in toto except as regards the amount of damages which is hereby raised to P50,000.00 in line with the current jurisprudence.[25]

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] RTC Decision, p. 7; Rollo, p. 21.

[2] Id.

[3] Regional Trial Court, Branch 20, Pagadian City.

[4] RTC Decision, pp. 1-2; Rollo, pp. 15-16.

[5] See *People v. Partulan*, 156 SCRA 489 (1987).

[6] TSN, Rosie Acabo, January 15, 1991, pp. 12-13.

[7] Id., pp. 3, 11.

[8] TSN, Dr. Franklin Macalua, August 20, 1991, pp. 29-31.

[9] Exhibit A, Records.

[10] TSN, Jeany Polinar, October 29, 1990, pp. 27-29.

[11] *People v. Biago*, 182 SCRA 411 (1990); *People v. Juanga*, 189 SCRA 226 (1990).

[12] Reply Brief, pp. 1-3; Rollo, pp. 83-85.

[13] *People v. Damaso*, 190 SCRA 595 (1990), citing *People v. Labis*, G.R. No. L-33087, November 15, 1987.

[14] Brief for the Appellant, p. 6; Rollo, p. 56.

[15] Id., p. 7; Rollo, p. 57.

[16] *People v. Dupali*, 230 SCRA 62 (1994), citing *People v. Grefiel*, 215 SCRA 596 (1992).

[17] *People v. Rio*, 201 SCRA 568 (1991).

[18] RTC, Decision, pp. 3-4; Rollo, pp. 17-18.

[19] TSN, Epifania D. Polinar, January 14, 1991, pp. 18-21.

[20] RTC Decision, pp. 5-7; Rollo, pp. 19-21.

[21] *People v. Lao*, G.R. No. 117092, Oct. 6, 1995; *People v. Lazaro*, G.R. No. 99263, Oct. 12, 1995; *People v. Laroa*, G.R. No. 98428, Sept. 18, 1995.

[22] Art. 344, Revised Penal Code; Rule 110, Sec. 5, Revised Rules of Court.

[23] See *Benga-Oras v. Evangelista, et. al.* 97 Phil. 612 (1955).

[24] *People v. Junio*, 237 SCRA 826 (1994); *Flores v. People*, 211 SCRA 622 (1992).

[25] *People v. Bulaybulay*, G.R. No. 104275, Sept. 28, 1995.

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