

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL SOBERANO Y MADRIAGA, ACCUSED-APPELLANT.

G.R. No. 108123. May 29, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

Arnel M. Soberano was charged with raping Rosy Luz G. Euden who was then fourteen (14) years old. At arraignment, Soberano pleaded not guilty.[1] After trial, the court a quo rendered a decision finding him guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer reclusion perpetua and to pay complainant Rosy Luz G. Euden P30,000.00 by way of civil indemnity.

The trial court summed up the evidence offered by the prosecution in the following terms:

"Private complainant Rosy Luz Euden was fourteen (14) years at the time of the commission of the crime charged on March 22, 1991, having been born on March 3, 1977. She was the time enrolled as a second year high school student at NCBA located at Aurora Boulevard, Quezon City. Her classes were from seven up to twelve in the morning. Both her parents, Clodualdo and Dorotea are employed. Her brother Woody also goes to school and leaves early in the morning. They reside in one of the units in a 12-door apartment situated at 15th Avenue, Cubao, Murphy, Quezon City. She knows accused Arnel Soberano y Madriaga, being one of their neighbors in the apartment occupying No. 81-H thereat, while they occupied No. 81-F.

That on March 22, 1991, at about 2:30 o'clock in the afternoon, Rosy was alone in their apartment. She went to the store about ten (10) meters away to buy something for her merienda. From the store, she returned to their apartment and after getting inside, she closed its door. She was about to go upstairs when she saw Arnel behind her. He suddenly pulled her two hands and held them at her back and then pushed her to a sofa. She tried to free herself but was unsuccessful as Arnel was too strong for her. She cried as she could not withstand what Arnel was doing to her. Arnel kicked her in the abdomen. Thereafter, he started removing his clothes and in the process dropping a screw driver. Afterwards, he pulled down her shorts including her panty and punched her on both thighs. She tried to shout but no sound would come out from her mouth. He also threatened her not to do so or he would kill her. Arnel laid over and inserted his penis into her private part for about two (2) minutes. Then, Arnel dressed up and again warned her not to tell anybody what happened or else he would kill her and her family.

On April 6, 1991, Rosy, while in tears, told her mother Dorotea that Arnel raped her. Dorotea brought Rosy to Camp Crame, Quezon City, for medical examination. At there, Dr. Vladimir C. Villasenor examined her and thereafter submitted the following findings:

'GENERAL AND EXTRAGENITAL [sic]

Fairly developed, fairly nourished and coherent female subject. Breast are conical with light brown areola and nipples from which no secretions could be pressed out. Abdomen is flat and soft.

GENITALS

There is abundant growth of pubic hair, labia majora are full, convex and slightly gaping with the pinkish and congested labia minora presenting in between. On separating the same is disclosed an elastic, fleshy-type hymen with shallow healed lacerations of 3 and 9 o'clock, deep healed laceration at 6 o'clock. x x x.[2]

and concluded that 'subject is in non-virginal state physically and the newly or about 1 to 2 week old healed lacerations found on her genital could have been caused by an erected male penis x x x.

On April 8, 1991, Rosy, accompanied by her mother, went to PNP/CIS, Camp Crame, Quezon City where they formally filed a complaint for rape against Arnel x x x."

When late, on April 10, 1991, Rosy had a confrontation with Arnel at Camp Crame, she identified him as the person who raped her."[3]

For his part, accused Soberano denied that he had raped Rosy Luz, alleged that he was elsewhere at the time the rape allegedly took place, and that in any case complainant Rosy Luz and one Ronelo Saludo had a romantic or sexual tryst at the time the alleged rape took place.[4]

In this appeal, Soberano claims that the trial court committed the following errors:

"I.

The court a quo erred in finding that accused-appellant had sexual intercourse with the complainant.

II.

Assuming for the sake of argument that the accused-appellant had carnal knowledge with complainant, the court a quo erred in finding that the accused-appellant employed force or intimidation to consummate the sexual act.

III.

The court a quo erred in awarding indemnity in favor of the complainant."[5]

In his first assignment of error, Soberano contends that the trial court had erroneously refused credence to the testimony of defense witness Ronelo Saludo and of appellant himself, although their statements were never controverted by complainant Rosy Luz.

Defense witness Ronelo Saludo as well as appellant Arnel Soberano testified that Rosy Luz was the girlfriend of Saludo.[6] On the day and time of the alleged rape, Saludo claimed that he was in the apartment unit occupied by him as well as appellant Soberano's family -- one (1) door away in the same apartment row where complainant and her family occupied a unit.[7] Saludo further claimed that Rosy Luz had made her way from her family's apartment unit to their unit entering through a second floor window.[8] At that time, Soberano claimed that he was at home with his aunt, Marilyn Madriaga and was resting with his friend, Ronelo Saludo, in a room on the second floor, and that when Rosy Luz arrived, he (Soberano) thoughtfully went downstairs so that Rosy Luz and Ronelo Saludo could be alone upstairs. Defense witness Saludo then claimed that he stayed upstairs with Rosy Luz for about an hour, kissing and embracing her and fondling her private parts.[9] Thus, appellant Soberano claimed that he had nothing to do with any rape of complainant Rosy Luz and that his friend, Ronelo Saludo, spent an hour "in privacy" with Rosy Luz.[10]

The trial court, on the one hand, rejected the testimony of appellant Soberano and defense witness Saludo and, on the other hand, accepted the testimony of complainant Rosy Luz as firm, straightforward and credible. Complainant's testimony reads, in pertinent part:

"[ATTY. DACANAY:]

Q:

Do you know the accused in this case?

A:

Yes, sir.

ATTY. DACANAY:

If he is in the courtroom, will you be able to point at him?

A:

Yes, sir. He, sir. (Witness pointing to a man inside the courtroom who when asked answered by the name of Arnel Soberano.)

Q:

Why do you know the accused?

A:

He is our neighbor, sir.

Q:

Where is he a neighbor of yours?

A:

He lives near our house. He lives at No. 81-H, sir.

Q:

On March 22, 1991, do you recall where you were at or about 2:30 o'clock in the afternoon?

A:

Yes, sir. I was in the house.

Q:

What were you doing then?

A:

I was about to buy my merienda from the store, sir.

Q:

How far is this store from your house?

A:

At around ten meters, sir.

Q:

On March 22, 1991, at about 2:30 o'clock in the afternoon, were you alone?

A:

Yes, sir.

Q:

Now, were you able to go to the store.

A:

Yes, sir. I was able to buy what I want for my merienda, sir.

Q:

From the store, where did you proceed?

A:

When I went inside our house, I closed our door, sir.

Q:

And after locking the door behind you, what did you do?

A:

I was about to climb the stairs when I saw Arnel Soberano from my back, sir.

Q:

Did you find out where the accused come from?

A:

Maybe while I was buying from the store, he had a chance to sneak in.

Q:

When you saw the accused behind you, what had happened?

A:

He pulled my two hands and pressed my neck.

Q:

And after the accused have held your two hands behind you and grabbed you by his two hands, what else happened?

A:

He pushed (sinalya) to our sofa in the sala, sir.

Q:

What did you do then?

A:

I cried because I could not bear what he was doing to me but he kicked me on my abdomen, sir.

Q:

After you were hit by the accused in your abdomen, what else happened?

A:

He removed his clothes and while he was removing his clothes, a screw driver dropped from his clothes.

Q:

At that time what were you then wearing?

A:

I was in shorts and wearing t-shirt.

Q:

Now, what hold together that shorts of yours?

A:

A garter, sir.

Q:

And how about the upper portion of your body, how was it covered?

A:

I was in t-shirt but I had a bra, sir.

Q:

How about the accused, what was he wearing at that time?

A:

He was in yellow shorts and white sando, sir.

Q:

Now, you said that while the accused was removing his shorts, a screw driver fell. Now, when the screw driver fell, what happened next?

A:

He faced me and he pulled my shorts including my panty, and he boxed me on my both thighs.

ATTY. DACANAY:

At this juncture, your Honor, may I request for the exclusion of the public.

Q:

When the accused made you lied flat on your back on the sofa and after he had removed your panty, what else happened?

ATTY. VARGAS:

Your Honor, I object to the question. There was no such statement that the accused had made her lie on the sofa, your Honor.

COURT:

Reform the question.

Q:

At the time when you saw the screw driver fell from the body of the accused, where were you?

A:

I was on the sofa, lying prone, sir (nakasubsob).

Q:

How come that you were lying on the sofa?

A:

He pushed me lying face down, sir (sinubsob niya ako).

Q:

Now, while you were still lying on the sofa faced down and this screw driver fell, what else happened?

A:

I tried to shout but no voice could come out from my mouth, sir.

Q:

Afterwards, what happened?

A:

He [lay] over my body and he inserted his penis inside my organ, sir.

Q:

How long a time was the private organ of the accused inside your private organ?

A:

About two minutes, sir.

Q:

After that lapse of time of two minutes, what else happened?

A:

He dressed up and told me not to tell to anybody what happened or else he would kill me and my family."^[11]
(Emphasis supplied)

In contrast, the trial court found the stories of both appellant Soberano and defense witness Saludo as "simply fantastic and incredible." In the first place, the trial court found that the hymenal lacerations found on the person of complainant Rosy Luz had not been caused by the insertion of human fingers into her female organ, but rather had been caused by sexual penetration by a male penis. Said the court:

"But would said healed lacerations in the genital of private complainant because by the mere touching of her private parts which evidently is the thrust of the defense of the accused. The probability of such occurrence was qualified by Dr. Villaseñor, to wit:

Q - Could that laceration have caused by fingering

A - It is possible, Sir.

COURT:

Q - If how big is the finger?

A - In diameter, it is more than 4 centimeters, your Honor.

COURT:

Q - Would an index finger be appropriate to that laceration?

WITNESS:

A - The index finger is 4 centimeters, Your Honor.

ATTY. VARGAS:

Q - Can the middle finger cause also?

A - Yes, Sir.

Q - Those lacerations which you enumerated as 3, 6, 9 o'clock, those were probably caused by a finger and not by an erected penis?

A - No, Sir.

Q - What do you mean by that?

A - That the object being inserted is bigger than a four centimeters diameter finger.

Q - What about the middle finger, could it cause the same damage?

A - If that middle finger is more than four centimeter in diameter.

Q - That would cause 3, 9 and 6 lacerations?

A - Yes, Sir, but not the deep healed 6 o'clock laceration.

Q - You said that the middle finger cannot cause a deep healed 6:00 o'clock laceration, what about if it was done in like that manner (counsel is making a gesture with his middle finger push and pull movements).

A - It will only cause a shallow laceration, Sir.

Q - Even if the middle finger is at full (sagad na sagad)?

A - Yes, Sir." (pp 11-12 tsn July 24, 1991)

In this case, except to say that on date and time of the commission of the crime charged, defense witness Ronilo Saludo had a romantic interlude with private complainant for about an hour with him kissing her and touching her private parts, none was said, however, by him that he actually inserted any of his fingers inside her genital. And even if he did, it was not at all shown that any of his fingers is more than four centimeters in diameter. Further, it is unusual for young woman like the private complainant to indulge in such scandalous affair in the room of Saludo with the full knowledge of the presence in said house of all its occupants, including the elder Marilyn, aunt of accused. On the contrary, it is mostly likely that said alleged romancing is nothing but pure afterthought when viewed in the light of the fact that in the sworn statement he earlier gave to the police he did not at all mention that she has been his sweetheart and neither did he say about his alleged romancing with her on the day and time in question (Exh. 'H'). And it also puzzles one's sanity why private complainant would charge accused with the very serious crime of rape when what happened that day as Saludo would have the Court to believe was a sweet time of romancing between him and private complainant for about an hour. His story is simply fantastic and incredible which this court is not inclined to accept." [12] (Emphases supplied)

Appellant Soberano alleges that defense witness Saludo had adequately explained why his sworn statement earlier executed before the police authorities had made no mention at all of any relationship or of any sexual encounter with complainant Rosy Luz on the day that she said she had been raped. Saludo's supposed explanation for having intentionally withheld the "fact of his relationship" with complainant Rosy Luz was that he (Saludo) "was afraid somebody might spread it." The trial court gave no value or weight to this supposed explanation and, in our opinion, rightly so. Saludo's pretense was apparently that he sought to maintain Rosy Luz's reputation for chastity. The principal difficulty with this rather peculiar defense was that there was no evidence at all of any previous relationship (i.e., as boyfriend-girlfriend) between Rosy Luz and Ronelo Saludo. Upon the other hand, it was appellant Soberano whom Rosy Luz accused of having imposed coitus by force or intimidation. Ronelo Saludo

chose to defend and sustain, not Rosy his supposed "sweetheart," but rather Soberano whom Rosy had charged with sexual assault.

The issue obviously involves the credibility of witnesses. The constant rule in our jurisdiction is that this Court will accord great respect to the factual conclusions drawn by the trial court, particularly on the matter of credibility of witnesses since the trial judge had the opportunity — which is denied to appellate courts — to observe the behavior and demeanor of witnesses while testifying. The trial judge is thus able to form at first hand a judgment as to whether particular witnesses were telling the truth or not.[13] Appellant Soberano has failed to point to some reasonable basis for overturning the trial court's conclusions here.

In his second assignment of error, appellant Soberano claims that no force or intimidation had been employed against Rosy Luz to consummate the sexual act. Soberano contends that there was no manifest resistance on the part of Rosy Luz to the advances of the rapist, that she had failed to cry for help when she first noticed appellant Soberano in her house looking at her with lascivious intent or while she was being raped. He also argues that carnal connection would have been impossible to consummate in the body position that complainant Rosy Luz had testified she found herself physically vis-a-vis her assailant unless Rosy Luz had completely submitted to her assailant.[14]

Taking the last contention first, it suffices to note that no evidence of any kind to support this contention was offered by appellant Soberano. Rosy Luz had in fact testified that after she had been stripped of her underwear by appellant, the latter pushed her to the sofa in her livingroom, face down, and then placed himself on top of her. Just before doing so, appellant had held her by the neck, twisted her arms, kicked her in the abdomen and boxed her in the thighs. If there was submission, it was coerced submission.

In respect of her supposed failure to resist and to cry out for help, we consider that such behavior, even if true, does not suffice to show that she had voluntarily agreed to have sex with appellant. We have many times in the past ruled that the lack of consent and resistance on the part of the victim of her rapist need not be carried to the point of sustaining death or physical injuries at the hands of the rapist and that all that is necessary is that the force or intimidation applied against her should have enabled the assailant to effect sexual penetration.[15]

Finally, in respect of appellant Soberano's defense of alibi, it is only necessary to note that Soberano had failed to show that he was at some other place when the felony occurred and that it was physically impossible for him to have been at the scene of the crime. Soberano's home was, according to his own testimony, at the time the rape was committed, Apartment No. 81-H, 15th Avenue, Cubao, Quezon City, which is only one (1) apartment away from the unit occupied by complainant and her family who resided at No. 81-F. Thus, the firmly settled rule that in case of conflict between the defense of alibi and the positive identification of the accused as perpetrator of the felony, the latter should prevail,[16] must here be applied. In fine, the Court finds no cogent basis for disturbing the conclusions reached by the trial court, conclusions which are supported by the record and upheld by the jurisprudence of this Court.

The last supposed error pointed to by appellant Soberano — that the trial court had erred in granting complainant Rosy Luz indemnity — is actually merely a continuation of the arguments made by appellant in his first two (2) assignments of error. Indemnity should not have been awarded to complainant, appellant Soberano maintains, because he had never had sexual intercourse with her and, assuming he had, indemnity could not be awarded because the intercourse had been effected with her consent.[17] The conclusion we have reached with respect of the first two (2) assignments of error of appellant Soberano renders it unnecessary to deal with this last one in any detail.

WHEREFORE, for all the foregoing, the decision of the trial court, dated 18 August 1992, is hereby **AFFIRMED**

en toto. Costs against appellant.

SO ORDERED.

Romero, Melo, Vitug, and Francisco, JJ., concur.

[1] Records, p. 37.

[2] Medico-Legal Report No. M-0483-91, Folder of Exhibits, p. 4.

[3] Trial Court Decision, Records, pp. 161-163.

[4] Id., Records, p. 163.

[5] Appellant's Brief, pp. 11-12.

[6] TSN (Saludo), 18 December 1991, p. 4; TSN (Soberano), 12 December 1991, p. 4.

[7] TSN, 18 December 1991, pp. 3-4.

[8] Id.

[9] Id., pp. 4-5.

[10] TSN, 12 December 1991, p. 5.

[11] TSN, 8 August 1991, pp. 5-7.

[12] Rollo, pp. 20-22.

[13] E.g., *People v. Roldan*, 224 SCRA 536 (1993); *People v. Gerones*, 193 SCRA 263 (1991); *People v. Natan*, 193 SCRA 355 (1991); *People v. Umali*, 193 SCRA 493 (1991); *Concepcion v. Court of Appeals*, 193 SCRA 586 (1991); *People v. Martinada*, 194 SCRA 36 (1991); *People v. Arenas*, 198 SCRA 172 (1991).

[14] Appellant's Brief, pp. 22-23.

[15] *People v. Antonio*, 233 SCRA 283 (1994); *People v. Errojo*, 229 SCRA 49 (1994); *People v. Matrimonio*, 215 SCRA 613 (1992); *People v. Savellano*, 57 SCRA 320 (1974); *U.S. v. Villarosa*, 4 Phil. 434 (1905) citing the judgment of the Supreme Court of Spain, 14 May 1878.

[16] *People v. Tamayo*, 183 SCRA 375 (1990); *People v. Bautista*, 147 SCRA 500 (1987); *People v. Cervantes*, 125 SCRA 187 (1983); *People v. Elefano, Jr.*, 125 SCRA 702 (1983); *People v. Imbo*, 116 SCRA 355 (1982).

[17] Appellant's Brief, p. 25.

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