

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROQUE CABRESOS, ACCUSED-APPELLANT.

G.R. No. 109776. May 26, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

Roque Cabresos was charged with the crime of rape before the Regional Trial Court ("RTC"), Branch 26 of Medina, Misamis Oriental, in an information which alleged:

"That on or about 29th day of June 1988 at about 2:00 early dawn, more or less, at Sitio Upper Anoling, Barangay Kabulakan, Municipality of Balingoan, Province of Misamis Oriental, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously, by means of force and intimidation and with the use of a knife, have sexual intercourse with the offended party, Editha Pesidas, against her will and without her consent.

The crime was committed with the attendance of aggravating circumstance of abuse of confidence and obvious ungratefulness as accused was accommodated to live with the complainant's family.

Contrary to and in violation of Article 335, paragraph 1, in relation to Article 14, paragraph 4, all of the Revised Penal Code."[1]

At arraignment, he entered a plea of not guilty. After trial, he was found guilty and sentenced in a decision rendered on November 19, 1992. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, this court finds Roque Cabresos guilty beyond reasonable doubt of the crime of rape with the use of deadly weapon as defined and penalized under Article 335 of the Revised Penal Code with aggravating circumstances of abuse of confidence, obvious ungratefulness, blood relationship and with the use of deadly weapon; and, thereby sentences him to suffer an imprisonment under reclusion perpetua or thirty (30) years imprisonment, with full credit of the entire period of his detention from February 17, 1989 to the present or finality of this judgment. Accused Roque C. Cabresos is hereby declared as the father of the child Anthea Q. Pesidas and he is ordered to recognize and support said child in accordance with the provisions of the Family Code.

Accused Roque Cabresos is likewise ordered to pay Editha Pesidas the sum of P30,000.00 by way of moral damages and P20,000.00 by way of exemplary damages and to pay the costs."[2]

Roque Cabreros appeals from his conviction assigning the following as errors allegedly committed by the trial court:

"I

The trial court gravely erred in giving full credence to the testimony of the prosecution witness which is highly incredible, inconsistent and unreliable.

II

The trial court gravely erred in not giving credence to the defense interposed by accused-appellant.

III

The trial court gravely erred in convicting the accused-appellant despite failure of the prosecution to prove his guilt beyond reasonable doubt.[3]

The trial court found that the evidence of the prosecution showed the relevant facts to be the following:

"Complainant Editha Pesidas testified that she is 18 years old (at the time she testified), but she was 16 years old when she was raped by accused. She is single, housekeeper and a resident of Kabulakan, Balingoan, Misamis Oriental and has studied up to second year high school. She personally knows the accused Roque Cabresos whom she considers as her uncle because he is a cousin of her mother. She identified the accused in the courtroom by touching his shoulder.

Editha Pesidas declared that last June 28, and June 29, 1988, her mother and father were in Talisayan District Hospital. She was left in the house together with her brother and sister, who are 12 and 10 years old respectively. She slept alone in her room, while her brother and sister slept in the adjoining room. Roque Cabresos lived with them and in that particular night of June 29, 1988, Roque Cabresos slept in the sala. Then, at dawn, which was 2:00 o'clock in the morning, more or less, already June 29, 1988, she was awakened by accused Roque Cabresos who pointed a sharp pointed knife to her neck, squeezed her mouth and boxed her abdomen that she lost her strength.

There and then, Roque Cabresos took off her panty by tearing it. Then, accused placed himself on top of her and made a push and pull movement (kiyo-kiyo). Accused inserted his penis to her vagina that she felt severe pain which lasted about half an hour. The left hand of accused was holding the knife and was always pointing to her neck. She struggled, but accused is bigger and stronger that she lost her strength. Ultimately, accused succeeded in raping her. Something sticky came out from his penis; thereafter, Roque Cabresos threatened her; that, she would be killed if she would tell her parents. He uttered this threat about five (5) times. Then, Roque Cabresos left her room and returned to sleep in the sala.

After three days from the commission of the crime, her parents returned home from the hospital. She did not tell them about what happened because Roque Cabresos threatened to kill her.

Complainant testified that at the time accused raped her, she was fertile. In the succeeding months, she did not have monthly menstruation. When her pregnancy was noticeable, her parents inquired about it, and she told them the truth. She told also her grandfather Eufrocino Quejada some time last February 1989. She was accompanied to the house of a midwife for examination. Thereafter, accompanied by her parents and grandfather, they went to the police station of Balingoan, Misamis Oriental, and there, her affidavit was taken on February 14, 1989 which she subscribed on the following day before the prosecutor."[4]

Appellant Cabreros' version of the facts was summarized by the trial court as follows:

"On June 28, 1988 at 2:00 o'clock in the afternoon, accused appellant was at the house of Mr. Trapal in Upper Lapinig, Balingoan, Misamis Oriental together with his companions, namely: Anastacio Cabresos alias "Baloloy", Eddie Aragon, Rene Magallon, Dobby Magallon and Oloy Cabresos drinking one pocket size of Tanduay rum. While they were drinking, they were conversing about their works, especially the gathering of coconuts. After staying there for an hour, they proceeded to the municipal building of Balingoan, Misamis Oriental. In the said store, they again drank one pocket size of Tanduay rum. From the store of Beboy Pebular, at about 5:00 o'clock in the afternoon of the same day, they went to the house of Alding Itom. At Aiding Itom's house, they butchered a dog, cooked the meat and ate the same as their sumsuman. After eating, at around 6:00 o'clock in the evening of the same day they proceeded to the house of his uncle Anastacio Cabresos. When they were already at the house of his uncle, they once more drank another one pocket size of Tanduay rum. The accused went to sleep at around 11:30 o'clock in the evening of the same date at the latter's

house and woke up at about 5:00 o'clock in the morning of the following day. That was June 29, 1988."[5]

We are once again faced with the task of deciding who as between two (2) persons is worthy of belief and who is not. Private complainant Editha Pesidas claims that she was raped by the accused. The accused denies the accusation and interposes the defense of alibi contending that he could not have committed the rape because he was somewhere else at the time the alleged rape occurred. In support of his claim, Cabresos presented witnesses who vouched that he was with them on the night and hour in question, carousing on cheap rum and on dog-meat with great abandon.

After much consideration and upon careful examination of the record, we find no reason to overturn the findings of the trial court.

The issue to be resolved is, of course, whether or not the prosecution was able to establish from the testimony of the complainant the guilt of the accused beyond reasonable doubt.

We answer in the affirmative.

The question is essentially one of credibility and it is a well-settled rule reiterated in a long and still growing line of cases, that appellate courts will generally not disturb the factual findings of the trial court since the latter are in a better position to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying, unless it is convincingly shown that the trial court had plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[6]

In his appeal, appellant highlights certain points in complainant's testimony which he contends constitute inconsistencies or improbabilities which weaken the force of her accusation. However, going over those same points we come to a different conclusion.

On the night of the rape, the victim's parents were not at home. They were at a hospital in Talisayan where the victim's mother had to be brought[7] and they returned from the hospital only three (3) days later.[8] Complainant positively identified the accused as her assailant. There was a kerosene vigil lamp in the altar which illuminated her bedroom.[9] Moreover, as found by the trial court, she was familiar (with) the persona of the accused being a relative who resided in their house.[10]

Complainant was only able to cry out for help once because the accused threatened her with a knife which he pointed at her neck;[11] he also squeezed her mouth and boxed her stomach, as a result of which her strength and vitality fled her.[12]

The fact that her young brother (12 years of age) and sister (10 years old) who were sleeping in an adjoining room did not hear her outcry does not necessarily mean that the rape never occurred.

Appellant stresses the fact that after the alleged rape, the complainant testified that she continued going to school and not once did she report the incident to her parents or the police although she passed by the police station everyday on her way to school.[13] Furthermore, the complainant did not report the outrage on her person to a relative of hers who is a policewoman.[14]

We have previously held in earlier cases that delay in prosecuting the rape is not an indication of fabricated charges.[15] In at least one case, we observed that "if the complainant did not become pregnant, she probably would never have revealed that she was raped by her uncle. Many victims of rape never complain or file criminal charges against their rapists. They prefer to bear the ignominy and pain rather than reveal their shame to the world or risk the rapists' making good their threats to kill or hurt their victims."[16] This in fact was what happened here where the victim reported the incident to her parents only eight (8) months after she had been raped when her

pregnancy became noticeable. Similarly, in the case of *People v. Soterol*,^[17] where the appellant had contended that complainant's 6-month delay in filing the complaint and her silence after the alleged rape render her charge incredible, we ruled that the complainant's failure to report the rape incident earlier had been fully and satisfactorily explained. There, the complainant testified that she did not report the incident immediately because she believed her uncle's threat to kill her.

Editha's inaction for eight (8) months was sufficiently explained by her in open court. Thus:

"(Direct Examination of Editha Pesidas)

Q:

And when your father arrived in your house, did he know about the incident?

A:

No, sir.

Q:

Why?

A:

I did not say anything because I was afraid of the warning of Roque Cabresos.

x x x x x x x x

Q:

What was the warning or threat of the accused during the incident?

A:

He said that if I tell my parents he would kill me.

Q:

How many times did he utter these words?

A:

Five times.^[18]

x x x x x x x x

(Cross-examination of Editha Pesidas)

Q:

When Roque Cabresos left your house, and your parents (were) already there, of course, your fear no longer existed because your parents were already there?

A:

I was still afraid of him.

x x x x x x x x

A:

I was still afraid for he might come back.[19]

x x x x x x x x

Q:

Did it not occur to your mind to tell your parents that you were already pregnant?

A:

No, because of fear and shame.

Q:

Did it not occur to your mind that your parents would eventually discover you were pregnant and it was better to tell them earlier so that if there is a person answerable for that they would run after him?

A:

No, because of my fear.

Q:

Did it not occur to your mind that your fear of being discovered will be useless because eventually your parents will discover it?

A:

No, because of my fear and shame.

Q:

Did it not occur to your mind your shame will be useless because eventually your parents will know of your pregnancy?

A:

No.

Q:

Why?

A:

Because of my fear.[20]

x x x x x x x x"

(Italics supplied)

While a mature woman would probably have acted differently, we are unable to conclude that Editha's continued fear of her violator and her failure to inform her parents of the rape meant that it had not occurred at all.

Appellant Cabresos also assails the findings of the trial court concerning the delayed delivery of the child as not supported by evidence. The trial court found that the complainant Editha Pesidas "gave birth within 300 days or 10 months allowable in medical science from conception or fertilization, implantation, gestation and to birth of the child,"[21] as a result of the sexual assault inflicted upon her by appellant. The trial court said on this point:

"x x x this court has taken note of the testimony of Editha Pesidas; that the onset of her monthly menstruation was June 9, 1988 and ended after five days. So, it must be June 14, 1988. Medical science has shown that from the first day of menstruation, the first ten days thereafter is considered a safe period, meaning the woman is not fertile. This corresponds to June 10 to 19, 1988. Then, the period from the 11th day to 20th day from the first day of menstruation is fertility period where the ovum is matured and any time may be fertilized by a sperm. In the case of Editha Pesidas, [the] fertility period corresponds from June 20 to June 29, 1988, that is why, Editha Pesidas said that from the day she was raped, she did not have any monthly menstruation thereafter, except a little blood spotting on July 20, 1988.

Medical science has taught us the basics of fertilization, conception, gestation and delivery of a child. First, the basics: a baby is formed when the sperm cell from the man meets (or fertilizes) the woman's egg or ovum. An ovum, which is released by the woman's ovary only once in about 28 days, has a maximum life of 24 to 72 hours (3 days only). The sperm cell, on the other hand, may live for up to 6 days under very hospitable conditions, but usually lives for only about 24 hours. When the ovum is not fertilized, it dies, and the absence of fertilization is normally indicated by the arrival of menstruation. On the other hand, when the ovum is fertilized, it attaches itself on the inner wall of the womb. This is sometimes known as implantation of fertilized ovum. The inner wall does not shed off, so menstruation does not occur during the entire period of pregnancy.

Somewhere in July 20, 1988 is the attachment of the fertilized ovum in the womb of Editha Pesidas. It is the date of the implantation of said fertilized ovum. That is why on said date, she had little blood spotting which is not considered as menstruation. Counting therefrom, the birth of Anthea Q. Pesidas on May 1, 1988, the child's coming to this world was within the 300 days or ten months, allowable in medical science from conception or fertilization, implantation, gestation, and to birth of the child." [22]

In computing the duration of pregnancy, "we should note that time is computed from the date of three different occurrences in the life of the mother: one is the first day of the last menstrual period, one is the time of intercourse, and one is the time of the fertilization of the ovum. x x x." [23] We find that the trial judge's computation in this case of the duration of complainant's pregnancy counted from the time of the fertilization of the ovum, is medically accepted and recognized.

Moreover, from complainant's testimony, the uncontroverted fact is that the complainant gave birth to a baby girl 307 days or 10 months after the date of her alleged rape. While the ordinary period of gestation is approximately 9 calendar months or 280 days, calculated from the first day of the last menstrual period, [24] there is nevertheless an abundance of medical authorities recording exceptions to this general rule. [25] In fact, it has been held that length of pregnancy varies from 220 to 330 days from date of fruitful coitus. [26] Thus, the 280-day rule is not a hard and fast one. [27]

On the other hand, as against the complainant's positive identification, the accused-appellant offers the defense of alibi. However, we have many times held that alibi is a weak defense and cannot prevail over the complainant's positive and clear identification of the accused as the perpetrator of the crime. [28] Moreover, the defense of alibi in this case must be rejected because aside from a clear and positive identification made by the complainant, the possibility of the accused having gone to the scene of the crime at the time of its commission was not at all remote. Note the following statements of defense witnesses:

"(Cross-examination of Rene Magallon)

Q:

And this place of Balodoy to Kabulakan, Balingoan, Misamis Oriental is how many kilometers, according to

your own estimate?

A:

Three kilometers.

Q:

And ordinarily hiking we can negotiate three kilometers in less than one hour?

A:

Yes, sir.[29]

x x x x x x x x

(Cross-examination of Anastacio Cabresos)

Q:

A healthy person like the accused can reach Barangay Kabulakan which is three kilometers only one hour because he is healthy?

A:

Of course, if he is healthy.

Q:

Or maybe less than an hour?

A:

Depending upon his speed in walking.[30]

x x x x x x x x

(Cross-examination of accused Roque Cabresos)

Q:

Anastacio Cabresos alias Baludo is living in what place?

A:

At Upper Lapinig.

Q:

What is the distance from Upper Lapinig to Kabulakan, particularly the place of Pesidas?

A:

Three kilometer, more or less.

Q:

By ordinary hiking you can negotiate three kilometers with an hour hike?

A:

It depends how you walk.

Q:

But natural walking?

A:

More than an hour, more or less.[31]

x x x x x x x x

Q:

You mean, by ordinary hike, you can negotiate one kilometer by one hour?

A:

Less than (an) hour.

Q:

Even in thirty minutes?

A:

Yes, sir.[32]

x x x x x x x x"

The settled rule is that, for alibi to be given credence, "an accused must not only prove satisfactorily that he was at another place at the time the crime happened; but more importantly, that it was physically impossible for him to be at the scene of the crime at the time of its commission." [33]

Of equal significance is the fact that the accused had the opportunity to commit the crime considering that none of his witnesses actually saw him at the hour in question because they were all already asleep at that time.

"(Direct Examination of Rene Magallon)

Q:

What time did Roque Cabresos go to sleep on June 29, 1988?

A:

1:20 in the morning.

Q:

About you, what time did you go to sleep?

A:

2:00 o'clock.[34]

x x x x x x x x

(Cross-examination of Anastacio Cabresos)

Q:

So that at 9:00 o'clock you were already lying down and at 10:00 o'clock you were already sound asleep?

A:

About that hour.

Q:

And you woke up the next morning at about 4:40?

A:

4:30 dawn.

Q:

And the accused who was sleeping in your house was not sleeping with you in the same room that night?

A:

He slept in another room.

Q:

So that you cannot determine if Roque Cabresos was still in his room because you could not see him?

A:

My house has three rooms and the room where they were sleeping I could pass by it.

Q:

But you had no time to pass by the room where they were sleeping because you were sleeping at that time?

A:

I woke up at 4:30.

Q:

It was only at 4:30 when you passed by the room where the accused (was) sleeping?

A:

Yes, sir.

Q:

At 12:00 midnight you did not wake up?

A:

No, sir.

Q:

You did not wake up at 1:00 o'clock?

A:

I woke up to urinate in my bedpan.

Q:

At 2:00 o'clock did you wake up?

A:

No, sir.

Q:

It was only 4:30 when you woke up again?

A:

Yes, sir.[35]

x x x x x x x x"

(Italics supplied)

Although we affirm the findings of the lower court with regard to the guilt of the accused and its appreciation of the aggravating circumstances of use of a deadly weapon,[36] abuse of confidence and obvious ungratefulness,[37] we must take exception to its appreciation of blood relationship as an aggravating circumstance in this case. We have held in earlier cases[38] that the relationship between uncle and niece is not covered by any of the relationships mentioned in Article 15 of the Revised Penal Code. Nevertheless, the penalty imposed by the trial court need not be disturbed considering the presence of other aggravating circumstances.

WHEREFORE, the decision of the trial court finding appellant Roque Cabresos guilty of rape and sentencing him to reclusion perpetua and declaring him as the father of the child Anthea Q. Pesidas, ordering him to recognize and support said child, is hereby AFFIRMED. The award to the complainant of civil indemnity in the total amount of P50,000.00 (P30,000.00 as moral damages and P20,000.00 as exemplary damages) is likewise AFFIRMED.

SO ORDERED.

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

[1] Rollo, p. 4.

[2] Judgment, p. 17; Rollo, p. 28.

[3] Appellant's Brief, p. 1; Rollo, p. 66.

[4] Judgment, pp. 2-3; Rollo, pp. 15-16.

[5] Appellant's Brief, pp. 4-5; Rollo, pp. 69-70.

[6] *People v. Tismo*, 204 SCRA 535, 552 (1991).

[7] TSN, 4 July 1990, p. 3.

[8] *Id.*, p. 12.

[9] *Id.*, p. 9.

[10] Judgment, p. 11; Rollo, p. 22.

[11] TSN, 4 July, 1990, pp. 4 & 10.

[12] Id., p. 4.

[13] Id., p. 10.

[14] Id., pp. 12-13.

[15] *People v. Silfavan*, 151 SCRA 617, 629 (1987).

[16] Id.

[17] 140 SCRA 401, 404-405 (1985).

[18] TSN, 4 July 1990, pp. 5-6.

[19] Id., p. 13.

[20] TSN, 5 July 1990, p. 5.

[21] Judgment, p. 14; Rollo, p. 25.

[22] Judgment, p. 13; Rollo, p. 24.

[23] S.B. Schatkin, *Disputed Paternity Proceedings*, 4th Ed. XXII, pp. 567-585 as cited in *Leonard v. Couse*, 372 N.Y.S. 2d 527, 568-569 [1975].

[24] *People v. Pamor*, G.R. No. 108599, 7 October 1994, p. 12 citing *Danforth's Obstetrics and Gynecology*, 161 (6th ed. 1990).

[25] S.B. Schatkin, *Disputed Paternity Proceedings*, 350 (1947 ed.).

[26] *People v. Pamor*, G.R. No. 108599, 7 October 1994, p. 12.

[27] Id., p. 12.

[28] E.g., *People v. Rendoque*, 205 SCRA 783, 789 (1992).

[29] TSN, 10 October 1990, p. 16.

[30] TSN, 3 September 1991, p. 8.

[31] TSN, 24 October 1991, p. 20.

[32] Id., p. 22.

[33] *People v. Dalanon*, G.R. No. 107458, 14 October 1994, p. 14 citing *People v. Dolar*, G.R. No. 100805, 24 March 1994.

[34] TSN, 10 October 1990, p. 7.

[35] TSN, 3 September 1991, p. 8.

[36] Article 335, Revised Penal Code.

[37] Article 14(4), id.

[38] U.S. v. Incierto, 15 Phil. 358, 360-361 (1910); People v. Balondo 30 SCRA 155, 161 (1969).

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