

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REX TABAO Y LUMOC SO, ACCUSED-APPELLANT.

G.R. No. 111290. January 30, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In an information filed on 18 April 1992 with the Regional Trial Court (RTC), Branch 7, Tacloban City, appellant Rex Tabao y Lumocso was charged with the crime of rape committed as follows:

That on or about the 3rd day of April, 1992, in the City of Tacloban, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did, then and there wilfully, unlawfully and feloniously have carnal knowledge with one AMOR CONGE against her will.

Contrary to law. [1]

After trial on the merits, the trial court promulgated on 3 May 1993 its decision [2] in Criminal Case No. 92-05-198, the dispositive portion of which reads thus:

WHEREFORE, the Court finds that the evidence have established beyond reasonable doubt the guilt of the accused of the crime of rape under Article 335 of the Revised Penal Code, par. 1, and is hereby sentenced to Reclusion Perpetua as provided therein.

No proof of damages having been presented, no pronouncement thereon is herein made.

SO ORDERED.

As established by the evidence for the prosecution consisting of the testimonies of the offended party, Amor Conge; Dr. Violeta Perez, head of the Psychiatric Department of the Eastern Visayas Regional Medical Center (EVRMC); Ernesto Lanza, Psychologist of the EVRMC; Dr. Antonina Ruiz; and Daisy Lo, the facts of the case are as follows:

The victim, Amor Conge, was at the time of the incident 15 years of age but with the mental age of an 8 to 9-year-old girl and with an I.Q. of 30, which is categorized as mentally defective. [3] She lives with her family in barangay Naga-naga, Tacloban City.

At about 8:00 p.m. of 3 April 1992, Amor accompanied her friend, Daisy Lo, also a teenager, to the squatter's area in Serin District, Tacloban City, to visit Daisy's friend, one Elmer. While Daisy and Elmer were talking at the latter's house, the appellant, who lives nearby, asked Daisy to introduce him to Amor, but Daisy told him to ask Amor herself if she wished to be introduced to him. He then approached Amor. Thereafter, Daisy saw him dragging Amor towards the "rip-rap." Daisy tried to follow them, but she lost sight of them because of the darkness. [4]

It turned out that Amor was brought to the porch of a house located in the interior portion of the vicinity where the

appellant pulled out a knife from his back and threatened Amor that he would kill her if she would not allow him to touch her. After undressing her, he raped her and then went away. [5]

Some time later, Daisy saw the appellant and asked him where Amor was. The appellant told her to come with him, for he would bring her to where Amor was. They then proceeded toward the interior part of the place, but in the next instant, the appellant disappeared into the darkness. [6]

After thirty minutes, Daisy saw Amor coming out of a house in the said interior part and noticed Amor's dress already dirtied, her underwear missing, and her slippers unpaired. Amor told Daisy that the appellant had raped her. Daisy, in turn, advised her to tell her mother, but Amor responded that she would rather not, because her mother might kill her. They then returned to Daisy's house at Imelda Veteranos Street in Tacloban City. Later, Amor's mother, Salvacion Conge, and her brother, Frankie, arrived. [7]

On their way home on board the family jeep, Amor told her mother of what happened to her. Amor did not, however, mention the name of the appellant. After bringing Amor to their house, Salvacion and Frankie proceeded to the police station to report the incident. [8] They arrived at the police station at 11:25 p.m. The entry in the police blotter [9] on her report reads as follows:

One Salvacion Conge, of legal age, resident of Naga-naga, Tacloban City, personally appeared to this station reported and alleged that at about 10:30 pm April 3, 1992, daughter named Amor Conge, 15 years old, was brought by her friend Daisy Lo to Serin District, this City, without their permission. Salvacion Conge further alleged that the clothes wore by her daughter was already dirty and apprehensive that something was happened to her at Serin District, this city.

The following day, Amor was examined by Dr. Antonina Ruiz of the Tacloban City Medical Center. Her findings, contained in a Medico-Legal Report, [10] are as follows:

OB-GYNE findings:

Pelvic exam: External genitalia

-

Grossly normal

Introitus

-

Nulliparous

-

Fresh incomplete hymenal lacerations at 6 o'clock position with linear abrasion the fourchet.

-

Old incomplete hymenal lacerations at 5 & 9 o'clock position.

Speculum exam: Cervix

-

pinkish, small close

Internal exam: Cervix

-

Small, softish, close, non tender

Uterus

-

Small, midline

Adnexae

-

No palpable masses

Discharges

-

Whitish mucoid non foul

Vaginal Smear

-

No spermatozoa seen.

Dr. Ruiz opined that the hymenal lacerations could have been caused by sexual intercourse. [11]

The defense relied solely on the testimony of the appellant, which the trial court summarized in this wise:

His version was that, at about 8:00 o'clock in the evening of April 3, 1992, while he was taking his supper Daisy Lo and Amor Conge arrived inquiring for the house of Elmer. As the house of Elmer is just across his house, he showed them to the house of Elmer. Daisy Lo entered the house of Elmer, but Amor Conge was left outside. As Amor was alone, he introduced himself to her. He invited her to their yard where they can sit and for 3 hours - from 8:00 o'clock up to 11:00 o'clock carried on their conversation. By 11:00 o'clock, Amor told him to fetch Daisy as she already wanted to return home, which he did. When he and Daisy Lo went to the yard where the accused left her, Amor Conge was nowhere to be found. Both he and Daisy Lo looked for Amor for about 30 minutes, but they were not able to locate her. As it was already late in the evening, he told Daisy Lo that he has to go and retire, which he in fact did. [12]

The trial court gave full faith and credit to the story of Amor Conge that she was dragged by the appellant, was forced to go with him because he had a knife, and was then raped. On the claim of the appellant that there was

failure to identify him as the rapist because he was not mentioned in the police blotter, the trial court ruled that no identification could be made at the time the incident was blotted since it was Amor's mother who made the report to the police station, and Amor was not with her at the time. It further ruled that the appellant's denial cannot prevail over Amor's positive identification of him as the rapist. Anent the inconsistencies between Amor's affidavit [13] and her statement in court, the trial court held that the same refer to minor details which do not detract from the actual fact of rape, especially in this case where the victim is not a normal person.

The appellant seasonably appealed to us from the judgment of conviction and, in his brief, contends that the trial court erred:

- X X X IN DISREGARDING ITS OWN OBSERVATIONS REGARDING THE TESTIMONY OF THE PRIVATE COMPLAINANT.
- X X X WHEN IT FAILED TO APPRECIATE IN FAVOR OF APPELLANT THE CRUCIAL SIGNIFICANCE OF POLICE BLOTTER ENTRY NO. 1474.
- X X X IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF PRIVATE COMPLAINANT.
[14]

As to the first assignment of error, the appellant calls our attention to what he perceives to be a complete turnabout by the lower court when, from its earlier contrary "pervasive observations spontaneously made ... when Amor was testifying," [15] it finally found Amor's testimony "clear and free from serious contradictions and rings true and candid." He then quotes portions of the transcripts of the stenographic notes showing such observations:

The Court is not yet - the picture is very, very hazy.

x x x

I cannot decide this case unless it is clearly presented today.

Without really her - did you [sic] really did [sic] it to her? The police report is very indicative.

x x x

So far what has been established is that she claims that she was raped considering the retarded IQ of this woman we do not know if the mother merely put the word [sic] into her mouth or it was the truth and no details has [sic] been presented yet how the rape was committed. Alright, we will clarify.

x x x

You must remember that if you will not testify and you will not answer the questions it would be very difficult for the judge to decide.

I will be frank with you. I find difficulty. The Court is trying its best to get the details yet she will not cooperate.

x x x

But according to the psychiatrist and psychologist she is only moderately mentally retarded, she can decide what is right and what is wrong but what I see in her she seems hesitant or afraid to testify, she refused to divulge how she was raped. She said in that porch Daisy Lo and her friend were there and she said at the house it was outside, these [sic] situation which to you [sic] will appear he is innocent. To me it is important because that is the beginning of the taking if the taking was forcibly [sic] done. Then, she said she was dragged or later on she said there was the knife, later on she said she was dragged without the knife - and this is a capital offense. I hope you understand the position of the Court. I am not supposed to be the one conducting the examination but because I

am the one who will decide.

x x x

You know Atty. Matol why there was a decision of the Supreme Court that when a woman claims that she was raped then it must be taken from complainant's testimony if credible but in that case there were enumeration of circumstances.

x x x

You know we can interpret her retentivity both ways, she cannot express herself fully and she has what you call organicity and or simply is not cooperating.

x x x

Eight to nine, I had a case yesterday she was 9 years old raped by the uncle, suffered from acts of lasciviousness in the hand of a policeman yet she can clearly testify as to what really happened to her.

You know you can describe false witness from the truthful witness. Truthful witness is practically re- showing the film as the incident was filmed in her mind. False witness there is no such film so she cannot replay. Assuming that she does, she can replay with errors.

We cannot say that she is telling the truth now. What I am telling her is the difficulty of which - do you want me to send him to prison for 30 years. I am trying my best. You give me the necessary film for my decision.

We are not persuaded. The appellant merely selected portions of the transcripts of the stenographic notes that appear to be favorable to his claim but deliberately suppressed therefrom, as indicated by the intervening ellipses in his quotations, either the answers of the offended party as to why she was reluctant to describe how she was raped, the manifestations of the prosecutor which led to the remarks of the trial judge, or the assurance of the prosecution that other witnesses would be presented to prove the rape. More specifically, the appellant suppressed the following:

(1)

The answer of the offended party to the court's questions, to wit:

COURT:

x x x x x x x x

Q

When Rex Tabao took you to that house, narrate to the Court step by step what happened if you claim that you were raped?

A

I was raped.

Q

How?

A

—

COURT:

You must remember that if you will not testify and you will not answer the question it would be very difficult for the judge to decide.

WITNESS:

A

He undressed me.

COURT:

Q

How?

A

—

Q

Why are you afraid to testify?

[Q]

Tell the Court why you don't like to testify?

A

Because I am afraid of Rex Tabao.

Q

Why are you afraid of him when you are in Court?

A

I am just afraid of him.

Q

Do you still like to prosecute this case?

A

Yes, sir. [16]

(2)

The manifestation of the prosecutor that:

ATTY. MATOL:

There was an express testimony from this witness that she was raped and rape presupposes sexual intercourse.
[17]

which elicited the following remarks from the trial judge, which the appellant quoted: "there was a decision of the Supreme Court that when a woman claims that she was raped then it must be taken from complainant's testimony if credible but in that case there were enumeration of circumstances." These remarks, in turn, merited the

following responses from Atty. Matol, which the appellant also suppressed from his quotations:

ATTY. MATOL:

Yes, but this refers to a woman not on the mental state.

x x x

ATTY. MATOL:

I would say, your Honor please that she is not cooperative, she is cooperative but she has a mental state of an 8 to 9 years mind. [18]

(3) The last paragraph of the last statement of the trial judge in the portions quoted by the appellant which refers to the assurance on additional witnesses:

COURT:

We cannot say that she is telling the truth now. What I am telling her is the difficulty of which - do you want me to send him to prison for 30 years. I am trying my best. You give me the necessary film for my decision.

We don't have time, did you have other witnesses?*

ATTY. MATOL:

Yes, your Honor aside from the witnesses presented we will present two more witnesses or at least one.

COURT:

Daisy Lo?

ATTY. MATOL:

Yes, your Honor.

COURT:

I think you have to present this Daisy Lo.

ATTY. MATOL:

I will present her because according to her affidavit, complainant and accused just disappeared, that is in her affidavit. [19]

Daisy Lo did in fact testify. [20] Thereafter, the prosecution presented Dr. Antonina Ruiz. [21] Before the offended party took the witness stand, the prosecution had already presented Dr. Violeta Perez [22] and the psychologist, Mr. Ernesto Lanza. [23]

It is clear to us that the quoted statements of the trial judge were nothing but initial observations based solely on the victim's apparently uncooperative attitude which, as shown from her aforementioned testimony, could have been reasonably induced by her fear of the appellant and by the obsession of the trial judge to extract from her a detailed description of how exactly the rape through force and intimidation was committed, from its preliminaries to the climax, and then to its denouement and ending. This, of course, was an unreasonable demand.

Evidence was offered without any objection from the defense that the offended party was a 15-year-old lass with the mentality of an 8 to 9-year-old child at the time she was raped. It is settled that carnal knowledge of a woman

above 12 years of age with a mental age of a child below 12 years, even if done with her consent, is rape. [24] Hence, proof of force or intimidation is unnecessary. Besides, one cannot expect a rape victim to remember every ugly detail of her traumatic experience which she might, in fact, be trying to forget. [25] In the 1901 case of *U.S. vs. Ramos*, [26] this Court laid down the rule that when a woman testifies that she has been raped, she says, in effect, that all that is necessary to constitute the commission of the crime has been committed. It is, however, essential that the woman's testimony be credible. If it is, the accused may be convicted on the basis thereof. [27]

We do not entertain any doubt on the credibility of Amor. She was firm in her testimony that the appellant raped her, and despite her fear of him, she did not hesitate to tell the court that she still wanted to prosecute the case. [28] Moreover, less than twenty-four hours after she was sexually assaulted by the appellant, she allowed her private parts to be examined. Her determination to undergo the ordeal of a public trial was unshakable.

We have said time and again that a woman would not allow the examination of her private parts, publicly disclose that she had been raped, and undergo the trouble and humiliation of a public trial if she were not in fact raped. [29] Furthermore, it was not even suggested that the offended party had any ulterior motive in imputing upon the appellant the commission of the heinous crime. Well-settled is the rule that when there is no evidence to show any improper motive on the part of the prosecution witness to testify falsely against an accused or to falsely implicate him in the commission of a crime, the logical conclusion is that no such improper motive exists and that the testimony is worthy of full faith and credit. [30]

Finally, if the trial judge changed his earlier impressions, it could have been caused by no other than the most thorough and objective analysis and evaluation of the testimonies of all the witnesses for the prosecution and not solely the testimony of the offended party. For that, the trial judge should not be faulted. Of course, he should have refrained from announcing his initial impressions. Under the Canons of Judicial Ethics, while conversations between the judge and counsel are often necessary, the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. [31]

Indeed, even if the offended party's testimony was wanting in the details initially desired by the trial judge, the crime of rape was proved beyond reasonable doubt by circumstantial evidence. Section 4, Rule 133 of the Rules of Court provides that circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Or, as jurisprudentially formulated, a judgment of conviction based on circumstantial evidence can be upheld only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion which points to the accused, to the exclusion of all others, as the guilty person, i.e., the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty. [32] The following circumstances, proved in this case, satisfy the rigid requisites for conviction on the basis of circumstantial evidence:

(1)

The appellant introduced himself to Amor Conge;

(2)

The appellant dragged Amor Conge toward the "rip-rap" and then to a house at the interior portion of the vicinity;

(3)

Minutes later, the appellant was seen by Daisy Lo, and when asked where Amor was, he told Daisy that he would bring her to the place where she could find Amor; then, he disappeared;

(4)

Later, Daisy saw Amor with a soiled dress, without her underwear, and with unpaired slippers;

(5)

Amor confided to Daisy that the appellant had raped her;

(6)

Amor also told her mother that she had been raped; and

(7)

When medically examined, Amor's private parts were found to have "fresh incomplete hymenal lacerations," which could have been due to sexual intercourse.

The foregoing discussions also resolve the third assignment of error.

In the second assignment of error, the appellant places undue stress on the fact that he was not named in the police blotter when the mother of the victim, Salvacion Conge, first reported the incident. He then speculates that Salvacion Conge did not accept Daisy Lo's story that it was he who had raped Amor which was why he was not initially named in the report. This contention is devoid of merit and is purely conjectural. Salvacion Conge would not have pursued the case if she were not convinced that her daughter had been raped by the appellant. It is hard to believe that a mother would sacrifice her own daughter and present her to be the subject of a public trial if she was not motivated by an honest desire to have the culprit punished. [33]

At any rate, the absence of the appellant's name in the police blotter was sufficiently explained by the fact that Amor was not brought to the police precinct. Furthermore, an entry in the police blotter is not necessarily entitled to full credit, as it is usually incomplete and inaccurate, either because of partial suggestions or want of suggestions or inquiries, without the aid of which the victim may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection of all that pertain to the subject. [34]

We therefore agree with the trial court that the guilt of the appellant for the crime of rape was established beyond reasonable doubt.

Conformably with current jurisprudence, [35] an award of P40,000.00 as indemnity is in order.

WHEREFORE, except as above modified, the appealed decision of Branch 7 of the Regional Trial Court of Tacloban City in Criminal Case No. 92-05-198 finding appellant REX TABAO Y LUMOCSO guilty beyond reasonable doubt of the crime of rape is hereby **AFFIRMED**. In line with the modification, the appellant is ordered to pay the offended party, Amor Conge, the sum of P40,000.00.

Costs against the appellant.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Original Records (OR), 1; Rollo , 5.

[2] Id., 55-61; Id., 8-14. Per Judge Pedro S. Espina.

[3] TSN, 5 February 1993, 13-15; 18-20; 31-32; 35; Exhibits "A" and "B."

[4] Id., 46-49; TSN, 3 March 1993, 3-6.

[5] TSN, 5 February 1993, 50-56; 64-66.

[6] TSN, 3 March 1993, 6-7.

[7] Id., 7-9; TSN, 5 February 1993, 67.

[8] TSN, 5 February 1993, 68-71.

[9] Exhibit "2"; OR, 12.

[10] Exhibit "E"; Id., 10.

[11] TSN, 3 March 1993, 22-23.

[12] OR, 58-59; Rollo , 11-12.

[13] Exhibit "D."

[14] Rollo , 43(A).

[15] Id., 43 (10-13).

[16] TSN, 5 February 1993, 86-87.

[17] Id., 89.

[18] TSN, 5 February 1993, 90-91.

* Italized to show the portion excluded from the quotations made by the appellant.

[19] TSN, 5 February 1993, 92-93.

[20] TSN, 3 March 1993, 3 et seq.

[21] Id., 21 et seq.

[22] TSN, 5 February 1993, 4 et seq.

[23] Id., 24 et seq.

[24] *People vs. Asturias*, 134 SCRA 405 [1985]; *People vs. Race*, 212 SCRA 90 [1992]; *People vs. Antonio*, G.R. No. 107950, 17 June 1994.

[25] *People vs. Villamayor*, 199 SCRA 472 [1991].

[26] 1 Phil. 81 [1901]; see *Anciro vs. People*, 228 SCRA 629 [1993].

[27] *People vs. Tismo*, 204 SCRA 535 [1991].

[28] TSN, 5 February 1993, 87.

[29] *People vs. Ramilo*, 146 SCRA 258 1986]; *People vs. Patilan*, 197 SCRA 354 [1991].

[30] *People vs. Rostata*, 218 SCRA 657 [1993].

[31] Canon 14, paragraph 2.

[32] *People vs. Tiozon*, 198 SCRA 368 [1991]; *People vs. de la Cruz*, 229 SCRA 754 [1994].

[33] *People vs. Rosell*, 181 SCRA 679 [1990].

[34] *People vs. Rostata*, *supra* note 30.

[35] *People vs. Arenas*, 198 SCRA 172 [1991]; *People vs. Race*, *supra* note 24.

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