

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANTOS CANADA, DEFENDANT-APPELLANT.

G.R. No. 112176. February 06, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is rape - where the pain endures, the ordeal lingers, and the stigma clings incessantly with anguish and humiliation. And when committed against a barrio lass of tender years, the lechery becomes compounded with apparent heartlessness that must be condemned, the perpetrator damned and prosecuted to the fullest extent. For this man's insatiable lust and thirst for the flesh deny this innocent victim forever the joy of discovering the conundrum of her femininity and the purity of her womanhood.

Santos Canada was found guilty by the trial court of raping 12-year old Loberiza Palaming, i.e., having carnal knowledge of her against her will, with lewd designs, by force and intimidation, to her damage and prejudice, for which he was sentenced to a prison term of reclusion perpetua, to indemnify his victim in the amount of P50,000.00, and to pay the costs.[1]

The evidence for the prosecution established that on 26 December 1990 Loberiza Palaming went to watch a public dance in La Union, Castilla, Sorsogon, together with Emma Valenzuela, Mary Villanueva and Daisy Laurio. The dance lasted until midnight. Loberiza sat near the entrance of the dance hall while her companions "went to a place." [2] Suddenly Loberiza was grabbed from behind and dragged towards a sampaloc tree ten (10) meters away. It was Santos Canada. Loberiza struggled hard but to no avail. Her hands were held then tied at her back, her mouth covered with a handkerchief. Santos Canada, armed with a gun, threatened to shoot her if she made any sound. But she continued to free herself despite the threat on her life. She firmly closed her legs but was overpowered and eventually overcome by the accused. He removed her maong pants and then her panty. His fingers felt her legs and then tiptoed to stroke her vagina. But this was not enough. He craved for more. He placed himself on top of her, intruded into her virginity and then unleashed the venom of his desire. He then got off from his quarry, released her hands and uncovered her mouth. Now freed, complainant boxed her despoiler before he could run away.

Loberiza narrated the incident to Larry and Tessie Valenzuela who in turn reported the matter to the barangay captain on 31 December 1990. But Loberiza's mother learned of the incident only on 1 January 1991 when she arrived from Manila.

The complainant was brought by her aunt Norma Lasarte to the Sorsogon Provincial Hospital where she was examined by Dr. Medy G. Auxillos. The medical examination revealed hymenal lacerations although there were no signs of spermatozoa or of physical injuries.

The accused, a member of the 8th Sorsogon CAGU Active Auxillary Company stationed in La Union, Castilla, Sorsogon, testified that on the night of the alleged incident he was sleeping at their house in Milagrosa, Castilla, Sorsogon, approximately two (2) kilometers away from La Union. He was off duty. He however could not ascribe

any ill motive on Loberiza to incriminate him as her rapist. His father Rogelio Canada nevertheless corroborated the alibi of the accused.

We affirm the conviction of Santos Canada. Complainant was only 12 years 5 months and 4 days old when raped; yet, her narration of her misfortune was so detailed that it could only have come from one who experienced such ordeal. She withstood the probing, penetrating, even misleading, questions of the defense. The alleged inconsistencies referred to by the defense were more apparent than real.

First. That complainant never mentioned in her sworn statement submitted to the PC/INP Provincial Headquarters that she was tied and gagged although in her direct examination she said she was tied and gagged, suffice it to say that "(e)x-parte affidavits are generally incomplete, hence inconsistencies between declarations of the affiants in their sworn statements and those in court do not necessarily discredit them and the infirmity of affidavits as an evidence is much a matter of judicial experience." [3] The sworn statement was in question and answer form. In her naivete a 12-year old girl will, naturally, only respond to questions propounded to her and nothing more.

Second. In her sworn statement complainant mentioned that she boxed the accused on the arms and back when he inserted his penis into her vagina. The defense found this unbelievable considering that no resistance was allegedly ever mentioned when complainant testified in court.

This is misleading. The records disclose that complainant struggled every inch of the way to preserve her virtue and hold her attacker at bay. Thus -

Q.

So it could be easy for you to make counterforce insofar as your two feet are (sic) concerned?

A .

I kicked him. When he removed my hand I boxed his back.

Q.

So you kicked him and right after that it was followed by a blow with his hand?

A.

Yes, sir.

Q.

You boxed him on his back? . . . you said?

A.

Arm and back.

Q.

So you fight (sic) out to defend your honor by kicking him and by boxing him?

A.

Yes sir.

Q.

You are very sure of that of course, what you did - kicking and boxing him?

A.

Yes sir.[4]

Third. The accused would persuade us that complainant was likewise inconsistent in naming her companions in going to the dance that evening of 26 December 1990. The records however belie this fact -

Q.

While there what were you doing in that place?

A.

We were observing or watching the dance.

Q.

You said "we," who were your companions then?

A.

Emma Valenzuela, Mary Villanueva and Daisy Laurio.[5]

On cross-examination the question propounded was -

Q.

Who was your companion then in going to the dancing hall?

A.

Mary Ann Valenzuela, Lea Legaspi.[6]

A scrutiny of the foregoing testimony reveals no inconsistency on the part of complainant. Loberiza's companions in going to the dance hall, on one hand, and her companions while watching the dance, on the other, may, and in all probability, be of different sets.

As if in desperation in exculpating himself, the accused advances the idea that complainant must have mistaken him for somebody else. This is ridiculous, especially after it has been established that she harbored no ill feeling towards the accused as to induce her to charge him with so grave a crime as rape.

Full credence is accorded the testimony of a rape victim who has shown no ill motive to testify against the accused.[7] The complainant clearly recognized the accused as her despoiler. The crime scene was not totally in darkness as there were lighted lamps about 30 meters away. Significantly, the accused was positively identified in court by the complainant. She was only 12 when defiled, still unaffected by mundane wiles and affairs of life. Hence "(s)he could not be expected to fabricate such a complicated tale as sexual defilement unless she experienced the same." [8] We normally lend credence to testimonies of young girls especially where the established facts indubitably point to their having been sexually assaulted.[9] Loberiza testified in a candid and straightforward manner. Her story was plain and unembellished, not woven out of sheer imagination. She described her ordeal in vivid details. A woman will not expose herself to the humiliation of a rape trial, with its attendant publicity and the morbid curiosity it will arouse, unless she has been truly wronged and seeks atonement for her abuse.[10] When a woman says she has been raped, she says in effect all that is necessary to show that rape was committed and if her testimony meets the test of credibility, the accused may be convicted on the basis thereof.[11] No unmarried woman would tell a story of defloration, allow the examination of her private parts, and therefore permit herself to be the subject of a public trial unless she was truly ravished and wants justice to be

done.[12]

The absence of spermatozoa does not negate conclusively the existence of rape. The absence can be explained in several ways. Firstly, the sperm may have been washed away. Secondly, the rapist may have failed to ejaculate. Thirdly, the maximum lifespan of spermatozoa is only 72 hours.[13] The complainant here was only examined five (5) days after the rape.

That there are no signs of external injuries does not belie rape. The medical examination disclosed lacerations in the hymen of the victim. One may ask - are these lacerations not the best physical evidence of the child's forcible defloration? Besides, it must be noted that the dastardly act was committed with complainant's hands tied at her back and her mouth gagged. The accused was armed with a gun. Expectedly, the 12-year old victim would be overcome and gripped in fear.

For rape to exist it is not necessary that the force or intimidation employed be so great or of such character as could not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard and fast rule. It is therefore enough that it produces fear - fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at the moment or thereafter, as when she is threatened with death if she reports the incident.[14] Intimidation would also explain why there are no traces of struggle which would indicate that the victim fought off her attacker.[15]

The defense of alibi raised by the accused is also unavailing. Not only is it weak, it is also totally unsubstantiated.

First. The allegation remains as a unilateral declaration on the part of the accused; it is a bare denial. He was never able to support his claim. The alibi was sought to be corroborated by the testimony of his father who is not a disinterested witness. In order to strengthen his claim the accused should have presented unbiased witnesses, and his father is not.

Second. The distance of the accused's house from the scene of the crime is only two (2) kilometers. Culled from the testimony of the accused's father, the distance can be traversed in only thirty (30) minutes. In this regard, the accused miserably failed to establish a strong and convincing evidence so as to preclude his presence at the crime scene.

Courts have always looked upon the defense of alibi with suspicion and have always received it with caution not only because it is inherently weak and unreliable but also because it is easily fabricated. For alibi to serve as basis for acquittal, it must be established with clear and convincing evidence. The requisites of time and place must be strictly met. Appellant must convincingly demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[16] Material to establishing alibi as a valid defense, it must be shown that it was physically impossible for accused-appellant to have been present at the place of the crime at the time it was committed.[17] As it is oft-repeated, alibi is the weakest of all defenses for it is easy to fabricate and difficult to disprove. Where accused was positively identified by the victim of the rape herself who harbored no ill motive against the accused, the defense of alibi must fail.[18]

WHEREFORE, the decision appealed from convicting accused-appellant SANTOS CANADA of RAPE and imposing upon him a prison term of reclusion perpetua, and to indemnify LOBERIZA PALAMING in the amount of P50,000.00, and pay the costs is AFFIRMED.

SO ORDERED.

Padilla (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Decision penned by Judge Simon D. Encinas, RTC-Br. 51, Sorsogon; Rollo, p. 18.

[2] TSN, 29 April 1992, p. 5.

[3] *People v. Alacar*, G.R. Nos. 64725-26, 20 July 1992, 211 SCRA 595, citing *People v. Lagota*, G.R. No. 85795, 14 February 1991, 194 SCRA 92, and *People v. Patilan*, G.R. Nos. 78772-73, 23 May 1991, 197 SCRA 354.

[4] TSN, 29 April 1992, p. 32.

[5] *Id.*, p. 4.

[6] *Id.*, p. 18.

[7] *People v. Matamorosa*, G.R. Nos. 104996-97, 28 March 1994, 231 SCRA 515, citing *People v. Palicte*, G.R. No. 101088, 27 January 1994, 229 SCRA 543, and *People v. Cabilao*, G.R. No. 62999, 25 June 1992, 210 SCRA 326.

[8] *People v. Repollo*, G.R. No. 108872, 7 October 1994, 237 SCRA 481.

[9] *Ibid.*; citing *People v. Sueta*, G.R. No. 94549, 9 August 1993, 225 SCRA 219; *People v. Abuyan Jr.*, G.R. Nos. 95254-55, 21 July 1992, 211 SCRA 662; *People v. Junio*, G.R. No. 110990, 28 October 1994, 237 SCRA 831, and companion cases.

[10] *People v. Salomon*, G.R. No. 96848, 21 January 1994, 229 SCRA 410, citing *People v. Grefiel*, G.R. No. 77228, 13 November 1992, 215 SCRA 596; *People v. Dabon*, G.R. No. 102004, 16 December 1992, 216 SCRA 656; *People v. De Guzman*, G.R. Nos. 102409-10, 21 December 1992, 216 SCRA 754; *People v. Yambao*, G.R. No. 77778, 6 February 1991, 193 SCRA 571; *People v. Patilan*, G.R. Nos. 78772-73, 23 May 1991, 197 SCRA 354; *People v. Vinas*, G.R. Nos. 91363-73, 15 October 1991, 202 SCRA 720; *People v. Pasco*, G.R. No. 68520, 22 January 1990, 181 SCRA 233; *People v. Rosell*, G.R. No. 86383, 30 January 1990, 181 SCRA 679; *People v. Albarillo*, G.R. No. 84729, 30 July 1990, 188 SCRA 113, and *People v. Comasis*, G.R. No. 87083, 14 September 1990, 189 SCRA 649.

[11] *People v. Querido*, G.R. No. 95319, 7 February 1994, 229 SCRA 752, citing *People v. Segundo*, G.R. No. 88751, 27 December 1993, 228 SCRA 691, and *People v. Rabanes*, G.R. No. 93709, 8 May 1992, 208 SCRA 768.

[12] *People v. Lagrosa*, G.R. Nos. 105956-57, 23 February 1994, 230 SCRA 306, citing *People v. Patilan*, G.R. Nos. 78772-73, 23 May 1991, 197 SCRA 354.

[13] *People v. Salomon*, G.R. No. 96848, 21 January 1994, 229 SCRA 410, 411, citing *People v. Eclarinal*, G.R. No. 83308, 12 February 1990, 182 SCRA 106; *People v. De los Reyes*, G.R. No. 85771, 19 November 1991, 203 SCRA 707, and *People v. Pomentel*, G.R. No. 87781, 11 December 1992, 216 SCRA 375.

[14] *People v. Antonio*, G.R. No. 107950, 17 June 1994, 233 SCRA 299, citing *People v. Matrimonio*, G.R. Nos. 82223-24, 13 November 1992, 215 SCRA 613, *People v. Grefiel*, G.R. No. 77228, 13 November 1992, 215 SCRA 596; *People v. Pamor*, G.R. No. 108599, 7 October 1994, 237 SCRA 472, citing companion cases.

[15] *People v. Bautista*, G.R. No. 89967, 1 September 94, 236 SCRA 107.

[16] *People v. Querido*, G.R. No. 95319, 7 February 1994, 229 SCRA 753, citing *People v. Claveria*, G.R. No. 94786, 6 April 1993, *People v. Antud*, G.R. No. 95684, 7 October 1992, and *People v. Besana*, G.R. No. 102722,

17 March 1993.

[17]People v. Sabaile, OR. No. 98704, 8 September 1994, 236 SCRA 370, citing People v. Cruz, G.R. No. 83811, 5 May 1992, 208 SCRA 326.

[18]People v. Rejano, G.R. Nos. 105669-70, 18 October 1994, 237 SCRA 645, citing People v. Cabuang, G.R. No. 103292, 27 January 1993, 217 SCRA 675; People v. De la Cruz, G.R. No. 102063, 20 January 1993, 217 SCRA 283; People v. Dominguez, G.R. No. 100199, 18 January 1993, 217 SCRA 170; People v. Felipe, G.R. No. 90390, 31 October 1990, 191 SCRA 183, citing People v. Restituto Bravo, G.R. No. 68422, 29 December 1989 and companion cases, People v. Sato, No. L-47911, 27 July 1988, 163 SCRA 602; People v. Patong-og, G.R. No. 70574, 27 November 1987, 155 SCRA 675; People v. Malabad G.R. No. 63219, 28 November 1984, 133 SCRA 392; People v. Ernesto Santos alias "Kariba," G.R. No. 77912, 6 March 1990 and companion cases.

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