

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARMELO FAIGANO Y GRUTAS, DEFENDANT-APPELLANT.

G.R. No. 113483. February 22, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

CARMELO FAIGANO Y GRUTAS appeals from the decision of the Regional Trial Court of Quezon City finding him guilty of the special complex crime of robbery with rape, sentencing him to reclusion perpetua, and ordering him to pay complaining witness Nely B. Ojina P50,000.00 for moral damages as well as the costs of suit.[1]

On the night of 5 January 1993 Nely was in her house at Mangahan, Barangay Commonwealth, Quezon City, with her 4-month old son and 3-year old niece. At eleven o'clock Nely and the children went to sleep. Her husband Rolando Ojina was then in Pampanga where he was working.

At one-thirty in the morning of 6 January 1993 Nely was suddenly roused from her sleep by a man whom she later identified as appellant Carmelo Faigano, a worker at a nearby construction project. He was in black T-shirt but was no longer wearing pants or underwear. Instinctively, Nely tried to scream but he hurriedly raised the mosquito net and poked a 29-inch balisong at her neck and warned her not to make any sound. He threatened to kill her and the children beside her. Then he started kissing her. She resisted but her strength was no match to his. He forcibly tore her nightie, raised her pair of brassieres above her breasts and pulled her to the edge of the king-size wooden bed. He spread her thighs apart against her will and inserted his organ into hers. He had sexual intercourse with her. Upon reaching his climax he withdrew and ejaculated on the blanket.[2] After satisfying his lust, accused-appellant then put on his short pants and ordered Nely to bring out her money.[3] Fearing for her life she reluctantly pointed to their closet. He took Nely's money amounting to P200.00, her husband's wristwatch valued at P2,000.00, and two (2) rings worth P760.00. He warned Nely not to move. Then he fled. It was only then that Nely was able to shout for help. Two (2) neighbors responded and she told them she had been robbed and kissed. The neighbors ran after the culprit but failed to overtake him so they went back to Nely to comfort her.

At eight o'clock that same morning Nely caught a glimpse of her attacker at the construction site. She immediately went to barangay tanod Alfredo Regacho and informed him that she was robbed and repeatedly kissed by the accused. She did not however divulge that she was raped because she was ashamed. They went to the construction site and invited accused-appellant to go with them to the barangay hall. It was there where Nely finally revealed that she was sexually abused by accused-appellant.

Nely and appellant were later brought to the Station Investigation Division, Police Precinct 5, where Nely gave her sworn statement. She was then referred to the PNP Crime Laboratory Service, Station 4, in EDSA, Kamuning, Quezon City, for physical examination and was issued Medico-Legal Report No. M-0042-93 dated 6 January 1993.

The accused invoked alibi. He claimed that he was asleep in his house during the commission of the crime imputed to him. However, the trial court disregarded his defense and convicted him as charged.

Accused-appellant contends in this appeal that the testimony of complainant Nely is incredible and contrary to human experience. He claims that -

First. The two (2) persons beside her on the king-size wooden bed were never awakened and remained in slumber throughout her alleged sexual ordeal;

Second. The act of Nely in not disclosing immediately that she had been raped is contrary to *res gestae*. If she was sexually abused she should have revealed this to her neighbors soon after. If she could disclose that she was robbed and kissed there was no reason why she could not have told them about the rape;

Third. Assuming *arguendo* that she was raped, it was very unlikely that accused-appellant would withdraw his penis and ejaculate instead on the blanket. He postulates that it is contrary to common experience that one would withdraw his organ at the height of satisfaction when he could easily release himself inside his partner's vagina, which he could have done;

Fourth. If he did commit the crime he would not have the courage to return near the vicinity of the rape. That he went to the construction site where he worked was an indication that his conscience was clear.

We are not persuaded. In rape cases, we seldom find any disinterested person who was actually present when the offense was committed. More often the court is left with the difficult task of weighing the testimony of the victim vis-à-vis that of the accused. The issue simply boils down to credibility.

It is oft-repeated that the findings of the trial court pertaining to the credibility of witnesses are entitled to great respect since it has the distinct opportunity to examine the demeanor of the witnesses as they testify before the court and ascertain whether they are telling the truth. We see no cogent reason to depart from this established rule.

In *People v. Ignacio*[4] this Court took judicial notice of the rather interesting fact that among poor couples with big families living in cramped quarters the presence of other people is not necessarily a deterrent to copulation. One may also suppose that children sleep more soundly than grown-ups and are not easily disturbed by the gyrations and exertions of adults in the night. The fact that Nely's 4-month old son and 3-year old niece were not awakened is simply normal because of their tender age.

The second argument is likewise bereft of merit. *Res gestae* is entirely irrelevant. That Nely did not immediately report the rape to her neighbors is understandable as Filipino women are known to be affectedly shy and coy. Rape stigmatizes the victim, not the perpetrator. It is a sad reality that a non-virgin who has been deflowered against her will is nonetheless treated with scorn by society. What is important is that Nely did finally reveal the fact of rape when she executed a sworn statement at the police headquarters.

The third argument is shallow and deserves scant consideration. Neither complete penetration nor ejaculation is essential to consummate rape. What is material is that there is penetration of the female organ no matter how slight.

The fourth argument is non sequitur. In *People v. Ocampo*[5] we ruled that flight from the scene of the felony is one of the indicia of a guilty conscience; however, it is equally true that in exceptional cases culprits have become bolder by returning to their prey under the pretext of feigning innocence to ensure that their victim has been successfully eliminated. Furthermore, the crime may have been committed by a pervert with no compunction whatsoever, or the accused is complacent that he would not be implicated because there are no witnesses, or if there be any, that these have been cowed into silence.

In the case before us the accused may not have fled from the locus criminis, but this does not indicate ipso facto his innocence. At any rate, as herein intimated, there is no case law holding that non-flight is conclusive proof of innocence especially when weighed against the definite and positive identification of accused-appellant as the rapist of the complainant.[6]

We find accused-appellant guilty of having raped Nely. His lame denials and alibi cannot stand against the convincing and straightforward testimony of the victim that it was no other than he who raped and robbed her in the early morning of 6 January 1993.

Nevertheless, the court a quo erred in convicting accused-appellant of the special complex crime of robbery with rape. Under the circumstances, the Court is convinced that when accused-appellant entered the victim's house he only had in mind sexual gratification. The taking of the cash and pieces of jewelry against Nely's will appears to be an afterthought. In *People v. Dinola*[7] we held that if the intention of the accused was to rob but rape was also committed even before the asportation the crime is robbery with rape. But if the original plan was to rape but the accused after committing the rape also committed robbery when the opportunity presented itself, the offenses should be viewed as separate and distinct. To be liable for the special complex crime of robbery with rape the intent to take personal property of another must precede the rape.

Accordingly, the Court finds appellant Carmelo Faigano guilty of the separate crimes of robbery and rape. For the crime of robbery, the law prescribes the penalty of prision correccional in its maximum period to prision mayor in its medium period.[8].Applying the Indeterminate Sentence Law and in the absence of mitigating or aggravating circumstances, the maximum of the penalty to be imposed shall be taken from the medium period of the imposable penalty, the range of the medium period being six (6) years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days, while the minimum shall be taken from the penalty next lower in degree which is arresto mayor maximum to prision correccional medium, the range of which is four (4) months and one (1) day to four (4) years and two (2) months.

As for the crime of rape committed with the use of deadly weapon, the penalty of reclusion perpetua shall be imposed,[9] instead of death, considering that the crime was committed on 6 January 1993 or prior to 31 December 1993 when R.A. 7659 reimposing the death penalty for heinous offenses took effect.[10]

WHEREFORE, the decision of the court a quo is MODIFIED. For the crime of rape, accused-appellant CARMELO FAIGANO Y GRUTAS is sentenced to suffer the penalty of reclusion perpetua, and for the robbery, the indeterminate penalty of two (2) years, four (4) months and ten (10) days of prision correccional medium as minimum, to six (6) years, two (2) months and twenty (20) days of prision mayor medium as maximum, to be served successively in accordance with Art. 70 of the Revised Penal Code.

Accused-appellant is further ordered to pay the offended party Nely B. Ojina the amount of P50,000.00 as indemnification, and P2,960.00 for the value of the personal property taken.

Costs against the accused-appellant.

SO ORDERED.

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

[1] Decision penned by Judge Celia Lipana-Reyes, Br. 81, Rollo, pp. 22-25.

[2] TSN, 22 March 1993, p.6.

[3] Id., 22 April 1993, p. 5.

[4] G.R. Nos. 106644-45, 7 June 1994, 233 SCRA 1.

[5] G.R. No. 80262, 1 September 1993, 226 SCRA 1.

[6] *People v. Precioso*, G.R. No. 95890, 12 May 1993, 221 SCRA 748.

[7] G.R. No. 54567, 22 March 1990, 183 SCRA 493, citing *People v. Canastre*, 82 Phil. 480 (1948).

[8] Art. 294, par. 5, The Revised Penal Code.

[9] Art. 335, The Revised Penal Code.

[10] R.A. 7659 took effect on 31 December 1993 (*People v. Simon*, G.R. No. 9302829 July 1994, 234 SCRA 555, 569; *People v. Caneja*, G.R. No. 109998, 15 August 1994, 235 SCRA 328, 338; *People v. David*, G.R. No. 105667, 16 August 1994, 235 SCRA 366, 368; *People v. Cuachon*, G.R. Nos. 106286-87, 1 December 1994, 238 SCRA 540, 547; *Ordoñez v. Vinarao*, G.R. No. 117376, 8 December 1994, 239 SCRA, 115).

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