

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANAGARIO SUBIDO Y YAMSON, ACCUSED-APPELLANT.

G.R. No. 115004. February 05, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The fundamental rule that the prosecution must rely on the strength of its evidence rather than on the weakness of the defense's is reiterated by the Supreme Court in resolving this appeal from the judgment of conviction dated March 19, 1994 rendered by the Regional Trial Court of Pasay City[1] for the crime of rape. The dispositive portion of said decision reads as follows:

"WHEREFORE, after a very thorough evaluation of the records of this case, this Court finds Anagario Subido guilty beyond reasonable doubt of the crime of rape for which he is hereby sentenced to suffer the penalty of reclusion perpetua or life imprisonment. Also, he is hereby ordered to pay P40,000.00 as moral damages and P 10,000.00 as exemplary damages."

The Facts

The facts of the case as found by the trial court² are as follows:

"Accused, Anagario Subido y Yamson, stands charged for Violation of Art. 335 of the Revised Penal Code, otherwise known as Rape:

'That on or about the 09th day of February, 1992, in Pasay, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above named accused Anagario Subido y Yamson, by means of force and intimidation employed upon the person of the undersigned Alejandra S. Mendoza, a minor, 15 years of age, did then and there wilfully, unlawfully and feloniously have carnal knowledge with (sic) the under signed against her will and consent.

Contrary to Law.'

"On February 24, 1992, accused assisted by counsel de officio (sic), Atty. Apollo Mantala, pleaded not guilty.

"During the pre-trial of this case on March 23, 1992, the following (sic) stipulations were arrived at:

- 1) that the Court has jurisdiction over the case and;
- 2) that the accused is the same person charged in Crim. Case No. 92-0164.

"The prosecution presented five (5) witnesses. First to be presented was the Medico Legal Expert, Dra. Annabelle Soliman from the NBI. She testified to the fact that the result of the examination she conducted on the alleged victim is compatible with the complaint of rape instituted by Alejandra Mendoza, (t.s.n. page 12, April 13, 1992). She said that the genital organ of Alejandra Mendoza showed signs of being sexually abused. Furthermore, she said that the laceration on the genital organ of the complainant is compatible to (sic) the time of commission of the alleged rape (t.s.n. page 12-13, April 13, 1992). This witness also submitted her statements in Court. These documents were supposedly prepared at the time of examination. All of these she

submitted were duly marked as evidence for the prosecution (t.s.n. pp. 13-15, April 13, 1992.

"The next witness presented by the prosecution was the mother of the victim, Mrs. Salvacion Mendoza. She testified that her daughter, Alejandra Mendoza, the rape victim used to sell balut after coming from school; that at the time the rape incident happened she was in Fairview together with her husband as they were constructing a nipa hut for her daughter; that on February 9, 1992 at the early morning she was fetched by one of her daughter (sic) Marissa and the latter told her that Alejandra Mendoza, her daughter was raped; that they immediately went home to Pasay; she further stated that when she asked Alejandra if she was raped, she answered in the affirmative pointing to Anagario "Gary" Subido as the perpetuator (sic); and that she brought her daughter to the NBI for examination. Mrs. Mendoza, the mother of the raped (sic) victim also informed the Court her daughter has been missing since March 20, 1992. The Court observed that the mother of the raped (sic) victim was crying when she was testifying.

"The other witness presented by the prosecution was the sister of the victim, Alejandra, by the name of Marissa Mendoza Rapol. She testified that her sister, Alejandra is selling balut; that on February 8, 1992, she was in her house; that her sister usually leave (sic) their house at 6:00 in the morning and arrive (sic) at their house at 3:00 in the afternoon; that on February 8, 1992 after arrival from school, Alejandra took a rest and at about 6:00 in the evening she and Alejandra placed the balut in front of their house and that on or before midnight of February 8, 1992 at about 12:00 o'clock, Alejandra remitted the money from the sale of the balut. When asked she she (sic) knew all these facts, the witness stated that Alejandra asked permission from her. The witness further stated that the house where Alejandra remitted the sale of the balut was only three (3) blocks away from their house; that it took only five (5) minutes to reach the place where the sale of the balut was to be remitted; that when Alejandra failed to arrive within 10 minutes more or less, she and her ate went to the place where Alejandra was supposed to remit the money; that they proceeded to the house of the sister of Anagario Subido and somebody told them that Anagario Subido was not around, they left and they proceeded to their room while Anagario Subido was in the sala. When the witness was asked to identify the person of Gary Subido or Anagario Subido, she pointed to the man who identified himself as Anagario Subido.

"Mrs. Angela Admaya, an NBI Agent was the next witness presented by the prosecution. She testified that she reported for duty on February 10, 1992; that a certain Alejandra S. Mendoza came and complained that she was raped by a certain Anagario Subido; that she took down the testimony of Alejandra (sic) Mendoza duly signed by the complainant in her presence and SRA Abdulgani Benito, NBI Senior Agent; that the complainant made a request to the Medico Legal for her genital examination; that it was the mother of the victim who filled up the request because according to the complainant she is under age.

"The prosecution presented the complainant herself, Alejandra Mendoza. She stated that she is 16 years old and a second year high school student; that she is living at 103 Merville Area Road, Pasay City with her ate Marissa and ate Feriza; she usually leave (sic) for school at 6:00 and she arrived (sic) home at 1:30 P.M., that after taking her lunch she helped in the store selling balut and barbecue; that on February 8, 1992, she was able to dispose all the balut and that she left the (sic) place at 11:30 to remit the proceeds of the balut. The victim further stated that on February 9, 1992, Anagario Subido was her companion while her two sisters were inside their house taking care of her (sic) children; that Anagario Subido is his (sic) boyfriend since January 31, 1992. Miss (sic) Mendoza also testified that in the evening of February 9, 1992, she and Anagario Subido were conversing about their school fraternities; that after having disposed of the balut in the evening of February 9, 1992; (sic) she went to the place of the owner of the balut to remit the proceeds which is about 50 meters; that he left the store while she was on the way to the place of the owner of the balut; that she saw Anagario Subido in front (sic) of the bakery drinking liquor; that Anagario Subido followed him (sic) although the victim was a little bit ahead on her way to remit the proceeds of the sale of the balut; that Anagario Subido was with her; that after remitting rhw (sic) proceeds of the balut and was about to go home, Anagario Subido asked her where her sisters were, and he (sic) told him that they were in their house; that after informing him of the whereabouts of her sisters, Subido told her that they would pass through the eskinita; that while they were

walking, Anagario Subido told her that they will pass by their house, but when the victim did not agree, the accused forced her and for that she sustained injuries on the right portion of her neck. The witness testified that Anagario Subido forced her to go with him by holding her two hands, using his left hand and the right hand was used in covering her mouth; that she was brought to a house under construction (sic) which was dark; that she resisted but the accused was holding her hands so tight and she could not shout because the accused was covering her mouth; that at the time the incident happened she was wearing a short and a t-shirt, with an underwear and a bra; the witness further testified that she tried to fight but the accused was very strong. The victim stated that the accused started kissing her neck, her lips, her breast; that he inserted his private part to the private part of the victim; that the accused was on top of her so she could not kick him. The victim further testified that after the consummation of the sexual act, she felt an extreme pain; that after the incident, the victim asked the accused why he did that to her, and the accused answered that he loves (sic) her and he is willing to face full responsibility of (sic) his act. The victim further testified that she was supposed to get her card in her school last March 26 but she was not able to do so, so to stop the gossip of what happened to her, she decided to roam around until she found herself crossing Mandaluyong. Later she was sent to a training school for girls by a policeman at Alabang, Rizal; that he (sic) left the training school and was later brought to the Scandanavian (sic) Children Mission by a certain Mrs. Tess del Mundo, Executive Director of the Scandanavian (sic) Children Mission. Jovy Pineda, a Social Worker accompanied her in the courtroom. Another Social Worker accompanied her in the courtroom who identified herself as Rosalinda Pareño.

The witness presented by the defense was Anagario Subido himself, whose testimony was offered to prove that accused Subido and Alejandra Mendoza were sweethearts. He admitted having met Alejandra Mendoza on January 4, 1992 in the victim's store. Accused testified that Alejandra Mendoza was young and humble and further admitted that they were sweethearts. He further testified that the rape that happened was their "kagustuhan"; he stated that the victim stated that she loves her (sic) very much and; he too loves her so much, then they make love. The accused admitted having sexual intercourse with Alejandra Mendoza, (t.s.n. December 7, 1992, pp. 5-7)."

The Appellant's Brief

On behalf of the accused-appellant, the Public Attorney's Office filed a Brief[3] stating a sole assignment of error, as follows:

"The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of rape."

Consistent with his plea of not guilty, the accused-appellant insistently argued that he did not employ force and intimidation on the complainant, who admitted that the accused Gary Subido was her sweetheart at the time the alleged rape took place on February 9, 1992.

The People's Brief

On behalf of the People, the Solicitor General recommended, in his Brief[4], filed on March 16, 1995, {that appellant be acquitted for failure of the prosecution to discharge its bounden duty to prove his guilt beyond reasonable doubt."

The Court's Ruling

We reviewed carefully the evidence, both testimonial and documentary, especially the prosecution's proof to establish the use of force (as against "voluntariness"). Axiomatic it is in rape cases that the victim's testimony must be clear, convincing and free from material contradiction; the evidence for conviction must clearly establish the guilt of the accused beyond reasonable doubt to overcome the constitutional presumption of innocence.[5] It is likewise fundamental that the evidence for the prosecution must stand or fall on its own merit and cannot be allowed to draw strength from the weakness of the defense's evidence.

After thorough review, we agree with both the defense counsel and the Solicitor General that the prosecution has failed to show convincingly that the accused-appellant employed force and intimidation on the victim. In fact, the

evidence tends to show the absence of such force. This conclusion has become unavoidable in light of certain crucial matters discussed below.

Before proceeding further, let us bear in mind the three (3) guiding principles in reviewing rape cases:

"In reviewing the evidence of this case, this Court was guided by the three (3) settled principles in reviewing rape cases, namely, (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense." [6]

Well-settled also is the rule that in the crime of rape alleged to have been committed by force, it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. [7] Otherwise stated, the prosecution must prove that force or intimidation was actually employed by the accused-appellant upon his victim to achieve his end. Failure to do so is fatal to its cause.

In the case at bench, the complainant's conduct immediately before and during the supposed sexual attack constitutes incontrovertible evidence that what really transpired was nothing more than a consensual sexual intercourse. And her "resistance" during the so-called assault may at best be considered a natural initial reaction to a lover's passionate fondling. Her behavior and the extent of her resistance (or lack of it) clearly belie her assertion that she was forced by appellant. First, she consented to appellant's suggestion that they pass through a dark alley. [8] Second, the place where the appellant allegedly started to drag her was inhabited, yet she did nothing to attract the attention of the people living thereat. [9] Third, inasmuch as her alleged assailant was unarmed, i.e., she was not being threatened with a gun, knife or any other weapon, she could have easily made an outcry or otherwise resisted the appellant without extreme danger to her life. Therefore, her actuations under the circumstances did not show the kind of resistance expected of a woman defending her virtue and honor. [10] A much more vigorous opposition to the assault on her virtue is only to be expected of an inexperienced victim on the threshold of womanhood.

The complainant's conduct immediately after the incident displays outright inconsistency with the natural reaction of an outraged woman robbed of her honor, and raises too many questions. First, after the alleged rape, she invited the appellant to go with her and asked him to dip his t-shirt in a canal so that it would appear that he was not the one who abused her. This is perplexing and appears to be unconnected with the supposed rape incident. Nevertheless, this is a detail supplied by the victim herself. [11] Second, even when she was already under the protective wings of her two (2) sisters, she still denied that something had happened between her and appellant. Not only did she NOT accuse, revile or denounce him, nor show rage, revulsion or disgust, but she even made up an excuse that they were chased by an addict. [12] Third, it was only after she was taken to a room in her house and grilled by her two older sisters that she "admitted" to having been abused. This circumstance must perforce be viewed in the light of appellant's declaration that the two sisters were "hurting" Alejandra inside the room. [13] This then leads to the inevitable conclusion that complainant was overcome by the strong "ascendancy" of her older sisters who induced her to concoct a story of forcible defloration.

It is likewise inconceivable and unnatural for a supposed victim of sexual abuse to contrive a defense for her alleged attacker, and subsequently offer an explanation to protect him from the ire of her own relatives. Consequently, one cannot but question her motive in bringing charges against him.

Accordingly, this Court held in *People vs. Dulay* [14] that it will not hesitate to reverse a judgment of conviction and acquit the accused where there are strong indications pointing to the possibility that the rape charge was

motivated by some factors other than the truth as to its commission.

Likewise too glaring are the marked contradictions in her declarations, which strike at her very credibility. At first, she admitted that appellant was her boyfriend since January 31, 1992, but later denied knowing him.[15] If indeed she did not know him, how then could she explain her card[16] bearing the amorous declaration: "Gary, I love you, be careful with my heart"? Moreover, in her affidavit and complaint sheet submitted to the National Bureau of Investigation (NBI), she averred that on her way home after remitting the money, appellant suddenly appeared, covered her mouth and dragged her to a fetid creek. But at the witness stand, she made a complete turnabout and affirmed that appellant was with her all the time when she remitted the money.[17]

Part of her affidavit reads as follows:

"x x x Kagabi po, Pebrero 9, 1992 mga alas dose po ng gabi, pagkatapos ko pong mai-remit ang pera sa aking pinagkuhanan ng balut at barbeque ay papauwi na po ako sa aming bahay ng bigla na lang po itong sumulpot sa St. Joseph St., Barrio Balagbag itong si GARY SUBIDO at bigla niyang tinakpan ng mahigpit ang aking bibig at kinaladkad niya po ako papunta sa may ilog na mabaho. Hindi po niya inaalís ang takip sa aking bibig kaya hindi po ako makasigaw." [18]

Her testimony directly contradicted her statement in the affidavit. At the witness stand, she testified that on the night of 9 February 1992, the appellant was with her when she went to remit money to the owner of the balut she sold, and that they were together when they passed thru the "eskinita."

"FISCAL ABRAZALDO:

"Q:

Now, Miss Mendoza, after you have disposed of the balot on the evening of February 9, 1992, what did you do?

A:

I went to the place of the owner of the balot to remit the proceeds.

Q:

How far is this place of the owner of the balot from your house particularly from your store?

A:

About 50 meters.

Q:

Do you have any companion Miss Mendoza when you left your store to remit the proceeds of the balot?

A:

None, sir.

Q:

What about Anagrio (sic) Subido where was he when you left your store, because according to you he was with you while you were attending or selling balot at that time?

A:

He left the store while I was on my way to the balot owner I saw him in front of the bakery who were then drinking liquor.

Q:

When you noticed the presence of Anagario Subido while you were going to the owner of the balot, did you talk to him?

A:

I was a little ahead of him and then he followed me and then I asked him why he was drinking liquor (sic.) and he told me that he was doing that while he was waiting a time (sic).

Q:

And he did not leave anymore, he accompanied you in going to that place?

A:

Yes, sir.

Q:

And were you able to remit the amount of P 145.50 to the owner of the balot?

A:

Yes, sir.

Q:

When you remitted that amount, Anagario Subido was with you?

A:

Yes, sir." (TSN, November 23, 1992, pp. 7 & 9.)

Complainant's credibility having been put in serious doubt, the rule that "the judgment of the trial court in passing on the credibility of the witness will not be interfered with by the appellate court" does not apply in this case. As earlier shown, there are some facts or circumstances in the present case which are of weight and influence that have been overlooked or the significance of which have been misinterpreted.[19] Thus, this Court has held in the *Dulay* case:[20]

"It has, of course, been the jurisprudential policy that when it comes to the issue of credibility of witnesses, appellate courts give much weight and respect to the findings of the trial court, owing to the latter's opportunity to observe and examine the witnesses' conduct and attitude at the trial and in the witness' chair. This is merely the general rule, however, for if the trial court has overlooked or disregarded facts and circumstances of significance in the case, then this Court has no option but to review the facts under consideration, a deviation from the general rule being imperative." (*Italics supplied*)

Incidentally, we note that the decision appealed from did not strictly follow the standards set by the Rules on criminal procedure.[21] Between the recitation of facts above-quoted (which we found satisfactory), and the dispositive portion of the decision (quoted on page 2 hereof), is sandwiched a one-paragraph discussion by the trial court, with a one-statement conclusion drawn from the facts presented, which conclusion held that the evidence submitted by the prosecution is overwhelming as against the accused. We quote:

"The evidence submitted by the prosecution is overwhelming against the accused. The defense of the accused

that he and the victim are sweethearts does not give him a license to force the victim to go into carnal cohabitation with his (sic) sweetheart against her will. To a Filipino woman, her honor is valued more than her life for it is our culture, that is (sic) better for her to cross the great divide and die a bitter death than to subject herself to such humiliation facing the Court and telling in open Court the alleged rape incident, the ordeal she underwent. No one would ever dare fabricate stories about what happened to her if she is not telling the truth."

The decision did not state the specific factual bases for the conclusion of guilt beyond reasonable doubt reached therein, but merely made sweeping generalizations. This could have been vastly improved by examining, evaluating and restating the factual bases to sustain the conviction, if such conviction ought to have been handed down, to begin with.

Moreover, we should add that the maximum penalty for rape prior to the passage of the Death Penalty Law[22] was reclusion perpetua and not life imprisonment[23] And, although moral damages may be awarded under the Civil Code in case of rape,[24] by virtue of Article 2219 of the Civil Code, exemplary damages may only be imposed when the crime is committed with one or more aggravating circumstances,[25] of which there are none in this case. In any event, since the accused in this case will have to be acquitted, the award of damages imposed by the lower court will consequently have to be deleted, which award has no basis at all in any act of the accused from which civil liability on his part could have arisen.[26]

WHEREFORE, the appealed judgment of the court a quo is hereby REVERSED and SET ASIDE. Accused-appellant, Anagario Subido y Yamson is hereby ACQUITTED on reasonable doubt, and the award of damages hereby DELETED. Accused-appellant's immediate release is ordered, unless there is any other valid cause for his continued deprivation of liberty.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., and Melo, Francisco, JJ., concur.

[1] Branch 115, presided over by Judge Edita M. Mulingtapang.

[2] Rollo, pp. 19-22.

[3] Rollo, pp. 43-78.

[4] Rollo, pp. 104-115.

[5] *People vs. Magpayo*, 226 SCRA 13 (September 1, 1993); *People vs. Castillon*, 217 SCRA 76 (January 15, 1993).

[6] *People vs. Tacipit*, 242 SCRA 241, 247 (March 8, 1995), citing *People vs. Lim*, 206 SCRA 176 (February 13, 1992). See also *People vs. Arnan*, 224 SCRA 37 (June 30, 1993); *People vs. Morre*, 217 SCRA 219 (January 18, 1993); *People vs. Casinillo*, 213 SCRA 777 (September 11, 1992).

[7] *People vs. Castillon*, *supra*. See also *People vs. Jervoso*, 124 SCRA 765 (September 29, 1983).

[8] TSN., November 23, 1992, p. 10.

[9] *Id.*, p. 11.

[10] *People vs. Geneveza*, 169 SCRA 153, 162 (January 13, 1989). See also *People vs. Garciano*, 150 SCRA 638 (June 17, 1987).

[11] TSN, November 23, 1992, p. 16.

[12] Id., p. 17.

[13] TSN., December 7, 1992, p. 10.

[14] 217 SCRA 132 (January 18, 1993).

[15] TSN, November 23, 1992, pp. 7 & 10.

[16] Exhibit 1.

[17] TSN., November 23, 1992, p. 9.

[18] Exhibit "E" for the prosecution; records, p. 125.

[19] People vs. Aguilar, 222 SCRA 394 (May 21, 1993).

[20] Supra.

[21] Sec. 2 of Rule 120 reads as follows:

"Sec. 2. Form and contents of judgment. -The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts proved or admitted by the accused and the law upon which the judgment is based.

"If it is of conviction, the judgment shall state (a) the legal qualification of the offense constituted by the acts committed by the accused, and the aggravating or mitigating circumstances attending the commission thereof, if there are any; (b) the participation of the accused in the commission of the offense; whether as principal, accomplice, or accessory after the fact; (c) the penalty imposed upon the accused; and (d) the civil liability or damages caused by the wrongful act to be recovered from the accused by the offended party wrongful act to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved or waived.

In case of acquittal, unless there is a clear showing that the act from which the civil liability might arise did not exist, the judgment shall make a finding on the civil liability of the accused in favor of the offended party."

[22] Sec. 11, R.A. 7659.

[23] Art. 335, Revised Penal Code, as amended.

[24] People vs. Miranda, 235 SCRA 202 (August 10, 1944).

[25] Article 2230 of the Civil Code; cf People vs. Maguikay, 237 SCRA 587 (October 14, 1994).

[26] Section 2, Rule 120, supra.

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