

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERTO BANTISIL AND JOHN DOE, ACCUSED. BERTO BANTISIL, ACCUSED-APPELLANT.

G.R. No. 116062. October 18, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The defense presented a "peeping tom" at the trial of this case to boost its exculpatory lover-theory. But the trial court, after assessing the entire evidence, was unconvinced and convicted the appellant of the crime charged and sentenced him to suffer a penalty of reclusion perpetua and to pay the offended party a civil indemnity of P50,000.00, plus costs.[1] The court further ordered the archiving of the case against the other accused who has remained at large, subject to its revival upon his arrest.

The antecedent facts are as follows:

On 1 June 1988, 17-year old Jocelyn Congson filed with the Regional Trial Court (RTC) of Mandaue City a criminal complaint[2] against accused Berto Bantisil and John Doe for forcible abduction with rape, the accusatory portion of which reads as follows:

That on or about the 23rd day of April, 1988, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and helping one another, abducted the undersigned, a woman, by then and there forcibly taking and carrying her away with lewd design and against her will and once carried away to a secluded place, accused Berto Bantisil armed with a knife, by means of violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the complainant against her will.[3]

The case was docketed as Criminal Case No. DU-764 in Branch 28 of the said court.

Both accused were at large; thus, the warrant for their arrest was returned unserved. It was only three years after, or on 3 November 1991, that appellant Berto Bantisil was arrested. The other accused, identified only as John Doe, has remained at large up to the present.

The appellant pleaded not guilty upon arraignment.[4] At the trial on the merits, the prosecution presented as its witnesses the complainant, Jocelyn Congson; her mother, Cipriana Congson; SPO1 Rene Catamora; and Dr. Mercedita Armedilla. The defense, on the other hand, presented the appellant himself and the "Peeping Tom," Roberto Comendador.

The trial court summarized the testimony of the offended party as follows:

That on April 23, 1988, she was employed at Lotus Rattan at Labogon, Mandaue City and her tour of duty was from 8:00 o'clock in the morning up to 10:00 o'clock in the evening.

That last April 23, 1988 she was not yet married and was residing at Casili, Consolacion, Cebu.

That at about 10:00 o'clock in the evening of April 23, 1988, she was on her way home from work together with her mother and her cousin who both fetched her from work and were then walking because they were not able to take a ride. But they were not able to reach their destination because at around 11:00 o'clock in the evening particularly at Jagobiao, Mandaue City, they were waylaid by two (2) persons who were following them and who after overtaking them, asked them whether they saw four (4) persons going ahead of them and afterwards, suddenly one of the persons poked a batangas knife on the left side of her neck. Then, both persons dragged her towards a grassy area while her cousin who was with them ran away and her mother who was following them pulled her. But the two (2) persons kicked her mother who was hit and as a result her mother fell into the canal but still she was able to shout at her for her to resist, which she was not able to do so because the two (2) persons who were males were strong.

That both persons stopped at a grassy area and then one of them, the accused in this case, pulled her pants down and inserted a finger into her vagina and after that, she [sic] let her wear her pants and then brought her into a hut.

That on their way to the grassy area into the hut, the accused placed an arm over her shoulders while at the same time poking the batangas knife on her neck and after arriving at the hut, accused left her for a while in order to ask for water from his neighbor.

That at the time when the accused asked for water from one of his neighbors and while she was in the hut, she just did not shout or scream or run away because she was already afraid and after accused received water from his neighbor, he came back and took off her pants, her clothes and her panty and then, inserted a finger into her vagina, then have [sic] sexual intercourse with her while massaging her breast and at the same time kissing her. The accused succeeded in having sexual intercourse with her for three (3) times. She testified that at the time when the accused was having sexual intercourse with her, she did not resist nor tried to fight back because the accused was poking the batangas knife. That while accused was having sexual intercourse with her, his companion already left them.

That after the third sexual intercourse, the accused told her to dress up and afterwards, he took the lamp, lit her face and said, "Here, take a look at my face because it is up to you tomorrow whether you have me killed or you have me arrested and my name is Berto Bantisil." And because of that, she really had a clear view as to the face of the accused and is very sure that the accused whom she has pointed in court is the very person who raped her on April 23, 1988.

That after that accused conducted her to a store where there was a jukebox and was told to go ahead and walked [sic] towards the corner but she was afraid to do so because she was not very familiar with the place and since there were two (2) persons who were sweethearts, she asked them about the corner and was told that it is still very far. So, she waited until morning in that store together with the sweethearts and at 5:00 o'clock in the morning, they started towards the corner.

That at the time when she met the two (2) persons who were sweethearts, accused already left her in that store.

That upon reaching the corner, her brothers were already there and she was all the time crying and after that, they reported the matter to the police.

That she has submitted herself to a medical examination as shown by the medical certificate issued by Dr. Mercedita Armedilla dated April 25, 1988 (Exh. "A").

She further testified that she was not able to identify accused's companion because she did not clearly see his face. That after April 23, 1988 she was able to see accused next on December 11, 1991 in Court.

That as a consequence of that rape committed on her by the accused, she was ashamed, suffered sleepless nights and had the feeling of uneasiness.[5]

Jocelyn's abduction was corroborated by her mother, Cipriana Congson. The latter declared that while she, Jocelyn, and a niece were walking on that fateful night of 23 April 1988 in Jagobiao, Mandaue City, the appellant and his companion waylaid them. The appellant poked a Batangas knife at her daughter's neck. Her niece was able to run away for help. For her part, Cipriana cried for help and begged the abductors not to take Jocelyn away. They did not listen to her; instead, she was kicked, causing her to fall into a canal. Afterwards, her niece returned with four policemen. They searched for Jocelyn, but they could not find her. At about 4:00 a.m. the next day, Jocelyn was found by her brother at the corner of Jagobiao. Jocelyn then related her ordeal with the appellant, whom she identified by name.[6]

SPO1 Rene Catamora, who was then with the Mandaue City Police Station, received the complaint for forcible abduction with rape filed by Jocelyn Congson at 8:00 a.m. of 24 April 1988. He conducted an investigation and attempted to arrest the appellant. But he was informed by the neighbors and the barangay captain that the appellant had already fled possibly to his hometown in Tabunok, Sogod, Cebu. He subsequently proceeded to the said place only to be informed that the appellant had already left for Masbate. It was only on 3 November 1991 that he was able to arrest the appellant upon a tip that the latter had returned to his residence in Jagobiao.[7]

Dr. Mercedita C. Armedilla, a resident physician of the Southern Islands Medical Center in Cebu City, conducted a medical examination on Jocelyn on 25 April 1988. She noted no external physical injuries on Jocelyn. Her internal examination, however, revealed that Jocelyn's hymen was no longer intact and that there were fresh lacerations at 3:00, 6:00, and 8:00 o'clock positions, which were possibly caused by the insertion of a foreign object into her vagina.[8] She then prepared a written report of her medical examination.[9]

The appellant presented a different version. According to him, he and Jocelyn were sweethearts. He met her in a dance in her barangay in Casili, Consolacion, Cebu. They agreed that on the night in question he would wait for her at the waiting shed at a corner in Jagobiao, Mandaue City. When Jocelyn arrived with her mother, he asked her if they could go as planned. Jocelyn told him that she would first ask permission from her mother. After she did, they proceeded to a nearby fishpond, where they talked about their love affair. In the next instant, Jocelyn embraced him. They ended up caressing each other. They then took off each other's clothes and lay naked on the ground. Just as he was about to consummate his act, she asked that they transfer to another place because her back was itchy. He suggested the place of his brother, and they proceeded to walk there.[10]

Inside the deserted hut, they talked anew about their love. Jocelyn then embraced him, and it sparked their physical longing for each other. They succumbed to their carnal desires several times for the rest of the night. In one coitus, it was even Jocelyn who guided him to his orgasm. After exhausting themselves, he left her to get some drinking water from his neighbor. They rested for a while then resumed their love making. Thereafter, Jocelyn got dressed and told him that she was going home as she had earlier promised to her mother. He accompanied her, and during their walk to her place, he mentioned that he would take a vacation in his province, Masbate. Jocelyn left him when they were near her house.[11]

On 25 April 1988 or two days after, he left for Tabunok, Sogod, Cebu, where he stayed for one year. Bored with his life there and with a little earning from fishing, he decided to move to Mindanao in Bogu, Del Monte, where he worked at the Philippine Packing. After one year, he went to Molave, Zamboanga del Sur, to try his luck, and he found an old friend whose sister he eventually married. Sometime thereafter, he and his wife settled in Cagayan de Oro City. After three years in the south, he suggested to his wife that they take a vacation in his former residence in Jagobiao, Mandaue City. It was upon his return that he was eventually arrested.[12]

Roberto Comendador, a neighbor of the appellant, sought to corroborate the appellant's testimony by declaring that in the evening of 23 April 1988, the latter went briefly to his house to ask for water. When he asked the appellant why he was in his brother's place that night, the latter replied that he was in the company of a woman. To verify the truthfulness of that answer, he went to the hut occupied by the appellant. He peeped through and saw the appellant being pumped by a woman. Both were naked. He watched them for around fifteen minutes. Having been sexually aroused by such a sight, he returned home and relieved himself with his wife.[13]

The trial court found the evidence for the prosecution credible and sufficient to establish beyond reasonable doubt the guilt of the appellant for the complex crime of forcible abduction with rape. According to the court, the complainant, having seen for the first time the appellant and his companion in the evening in question, could not have fabricated this case or testified falsely against the appellant. The latter has not shown that "she was prompted with improper motive, hence, her testimony is worthy to be given full faith and credit." [14] As to the complainant's mother, Cipriana, the appellant categorically admitted that he did not know of any motive which would move her to testify falsely against him.[15]

Regarding the complainant's failure to offer effective resistance or to make an outcry, the court found satisfactory reasons therefor. Since she was abducted, the appellant "was all the time poking a knife on her neck," while his companion was holding her. She was already overcome with fear, which continued until the lustful desire of the accused was consummated. Moreover, she was then only 17 years old compared to the accused who was already 24 years old, robust and strong. It would, therefore, be unreasonable to expect her to resist the appellant's aggression.[16]

The trial court found unbelievable the appellant's claim that he and Jocelyn were sweethearts. If that were true, she would not have reported to the authorities the incident in question, and he would have protected her honor instead of exposing publicly and maliciously, as he did when he testified, their several sexual intercours which he narrated in detail, and which narration was unnecessary to his defense. It also refused to believe his testimony that Jocelyn initiated their lovemaking by embracing him, since there is no proof whatsoever that "she is of loose moral character and that the traits of the Filipino women of modesty and shyness were no longer with her." It considered his escape and disappearance for three years as an indication of his guilt.[17]

In holding the appellant guilty of forcible abduction with rape, the trial court stated:

Verily then, the accused committed a complex crime of forcible abduction with rape. Forcible abduction was the necessary means to commit the rape and pursuant to Article 48 of the Revised Penal Code, the penalty for the more serious crime shall be imposed. Article 342 of the said Code penalizes forcible abduction with the penalty of reclusion temporal while Article 335 penalizes the crime of rape with reclusion perpetua. The latter then is the most serious crime. Accordingly, the penalty to be imposed must be reclusion perpetua.[18]

The appellant seasonably appealed from the judgment of conviction. He contends that the trial court gravely erred in giving credence to the testimony of the complainant and in adjudging him guilty of the crime of rape.[19] At the time of the alleged rape, she could no longer see where the appellant had placed the Batangas knife. She, thus, had the opportunity to run away, especially when the appellant left her in the hut to get water from a neighbor. Jocelyn also failed to recount any form of resistance when she was being ravished; her body failed to show injuries which she should have sustained while she was being dragged against her will; and, even the medical findings disclosed the absence of trauma in Jocelyn's vulva.

The appellant cites the cases of *People vs. Villapaña*[20] and *People vs. Cabading*,[21] where we acquitted the accused of the charge of rape due to the incredulity of the testimony of the complainant and her failure to do anything during the alleged act; and *People vs. Zamora*,[22] where the Court of Appeals ruled that the absence of

injuries in the body of a rape victim raises doubts on a charge of rape.

We find no merit in this appeal.

Credibility of witnesses is the paramount issue in this case. It is doctrinally entrenched that when such is the issue, the appellate courts will generally not disturb the findings of the trial court considering that the latter is in a better position to decide it, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value which, if considered, may affect the result of the case.[23] The appellant has miserably failed to convince us to depart from the doctrine.

We are in full accord with the findings of the trial court, which sufficiently explained why the complainant had failed to resist the bestial acts of the appellant. At the time of the incident, Jocelyn was only 17 years old. She was suddenly and unexpectedly abducted by two men, with one poking a knife at her neck. She witnessed the brute force used against her mother when the latter tried to save her from her captors. It was nighttime, and the place was secluded. She was actually defenseless and engulfed with fear. This fear inevitably prevented her from putting up any meaningful resistance. Even when she was alone with the appellant, she could not discount the possibility that the appellant's companion was just hiding nearby to prevent her escape. While there might have been an opportunity for Jocelyn to escape, such as when she no longer saw the knife in the possession of the appellant or when he left her in the hut to get some water, it would have been futile because of the seclusion of the place, the darkness of the night, and the possibility that the appellant's companion was on constant watch.

Intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. There is no hard and fast rule. For intimidation may be of the moral kind such as the fear caused by threatening a woman with a knife. And in such a case where she is cowed into submission, rendering resistance useless, it is unreasonable to expect her to resist with all her might and strength.[24]

The continuing intimidation on Jocelyn was sufficient to engender reasonable fear on her. Her failure to shout for help or fight back cannot be equated as voluntary submission to the appellant's criminal intent.[25] We have ruled that for rape to exist, it is not necessary that the force or intimidation employed on the victim is irresistible, as long as the same is sufficient to bring the desired result. This particularly applies to a young and innocent woman who is not expected to decisively act with courage and intelligence as a mature and experienced woman would normally do under the circumstances.[26]

Moreover, no woman of decent repute would file a complaint for rape and publicly expose herself to shame and scandal unless that is the truth and her redress for her defilement.[27] Jocelyn's naive and candid testimony attests to her honest intention to seek justice for the shame inflicted upon her, which shall forever haunt her and irretrievably, psychologically, and emotionally affect her.

The absence of trauma on Jocelyn's vulva and physical injuries on her body does not negate the fact of rape.[28] It must be noted that the internal examination of Jocelyn revealed fresh lacerations on her hymen at 3:00, 6:00, and 8:00 o'clock positions, which indicate that she had been sexually assaulted. At any rate, for a conviction of rape, it is not necessary that the same be supported by medical findings of injuries, since proof of injuries is not an essential element of the crime.[29]

Lastly, the version of the appellant that he and Jocelyn were lovers deserves scant consideration. Other than his self-serving claim, he presented no credible evidence to prove this special relationship, such as details regarding the personal circumstances of Jocelyn or love letters and gifts.[30] He does not even know the parents of Jocelyn.[31] If indeed he were Jocelyn's sweetheart, he should have safely brought her home, since it was already

near midnight. And, having had torrid manifestations of "love" — if his testimony is to be accepted — he should have visited her in the succeeding days. On the contrary, he never saw her again until three years later. During that period, he never wrote her to tell her where he was and how much he missed her. Such a conduct negated all pretensions of a special relationship with Jocelyn. Worse, as the trial court noted, his detailed testimony of their sexual intercourses from the preliminaries to the orgasms in the night of 23 April 1988, which he claimed were all provoked by Jocelyn, is unlikely to come from the lips of a sweetheart who is expected to maintain a modicum of respect for the precious honor of his beloved. His damning story against Jocelyn only exposed a debased mind.

The appellant's disappearance immediately after the incident and his changes of residences in different places to as far as Molave, Zamboanga del Sur, within a period of three years thereafter without any acceptable justification therefor strengthened the evidence of his guilty conscience. Flight is an indication of guilt or of a guilty mind. The wicked flee, even when no man pursueth, but the righteous are as bold as a lion.[32]

The appealed judgment then suffers from no error in both its findings of facts and conclusions of law.

WHEREFORE, the instant appeal is DISMISSED, and the challenged decision of Branch 28 of the Regional Trial Court of Mandaue City in Criminal Case No. DU-764 finding accused-appellant Berto Bantasil (Roberto Bantasil) guilty beyond reasonable doubt of the crime of forcible abduction with rape is hereby AFFIRMED in toto.

Costs against the accused-appellant.

SO ORDERED.

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

* When he testified, he gave his full name as ROBERTO BANTISIL (TSN, 20 May 1993, 2).

[1] Original Records (OR), 59-78; Rollo, 12-31. Per Judge Mercedes Gozo-Dadole.

[2] OR, 1-2; Rollo, 2-3.

[3] OR, 1.

[4] Id., 16; Rollo, 12.

[5] OR, 59-61; Rollo, 12-14.

[6] TSN, 24 November 1992, 2-8.

[7] Id., 16-20.

[8] TSN, 17 December 1992, 3-5.

[9] Exhibit "A"; OR, 38.

[10] TSN, 20 May 1993, 3-7.

[11] TSN, 20 May 1993, 8-14.

[12] Id., 14-17.

[13] TSN, 4 November 1993, 4-6.

[14] OR, 76; Rollo, 29.

[15] Id., 77; Id., 30.

[16] Id., 77-78; Id., 30-31.

[17] OR, 76; Rollo, 29.

[18] Id., 78; Id., 31.

[19] Rollo, 51.

[20] 161 SCRA 72 [1988].

[21] 174 SCRA 48 [1989].

[22] CA-G.R. No. 25944-R, 26 April 1962.

[23] People vs. Florida, 214 SCRA 227 [1992]; People vs. Matrimonio, 215 SCRA 613 [1992]; People vs. Pamor, 237 SCRA 462 [1994].

[24] People vs. Matrimonio, supra note 23.

[25] People vs. Grefiel, 215 SCRA 596 [1992].

[26] People vs. Matrimonio, supra note 23.

[27] People vs. Alib, 222 SCRA 517 [1993].

[28] People vs. Querido, 229 SCRA 745 [1994].

[29] People vs. Casipit, 232 SCRA 638 [1994].

[30] People vs. Tismo, 204 SCRA 535 [1991].

[31] TSN, 20 May 1993, 21.

[32] People vs. Garcia, 209 SCRA 164 [1992]; People vs. Martinado, 214 SCRA 712 [1992]; People vs. Alvero, Jr., 224 SCRA 16 [1993].

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