

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY PEÑERO Y BARRANDA, ACCUSED-APPELLANT.***G.R. No. 116292. July 31, 1997*

Ponente: ROMERO, J.

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At 6:00 o'clock in the morning of May 9, 1990, Maria Primavera, seven months pregnant, acting on the request of her husband Egar Primavera, went to Sitio Racracan, Bgy. Burabod, Lagonoy, Camarines Sur together with her mother and brother, to inspect their upland ricefield. Upon reaching Sitio Racracan, Maria parted ways with her mother and brother who proceeded to inspect their own ricefields on the other side of the hill. Having completed her inspection, Maria went on to their camote plantation and gathered camote and vegetables.

On her way home, Maria met accused-appellant Jimmy Peñero y Barranda, her first cousin. The latter was brandishing an unsheathed bolo and his pants were unzipped. Lasciviously staring at Maria, accused-appellant said: "Ika an toyo ko." [1] Maria became afraid and immediately started crying. Accused-appellant ordered her to sit down on the ground then started embracing her. Maria vainly pushed him away but she stumbled as accused-appellant proved stronger. The latter again embraced her, pushed her to the ground, laid on top of her, raised her clothes, tore her panty, spread her legs, inserted his penis into her vagina and proceeded to have sexual intercourse with her. During all this time, accused-appellant was holding the unsheathed bolo in his right hand.

Maria's struggle to free herself from accused-appellant proved futile as she was gradually losing whatever strength she had left. The pains, particularly in her abdomen, were becoming unbearable. After sating his lust, accused-appellant warned Maria not to divulge to anybody what had happened or he would come back and kill her.

On June 27, 1990, the following Information for rape [2] was filed against accused-appellant:

"That on or about the 9th day of May, 1990 at Sitio Racracan Baliwag, Barangay Burabod, Municipality of Lagonoy, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design, armed with a bolo by means of force, threats and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with said Maria Primavera against her will and the offended party suffered damages."

When arraigned, accused-appellant pleaded not guilty. During trial, he admitted having sexual intercourse with Maria but claimed that said sexual congress was pre-arranged as he and Maria were lovers even before March 9, 1990. He asserted that Maria merely concocted this rape charge in order to save herself from embarrassment and humiliation, having been seen by two persons doing the act with accused-appellant and likewise to escape the wrath of her husband.

The trial court rejected accused-appellant's version, convicted him of rape, sentenced him to suffer the penalty of reclusion perpetua and ordered him to pay P40,000.00 as damages. [3]

Accused-appellant is before this Court assailing the court a quo's decision for allegedly failing to appreciate the evidence adduced in his favor and for convicting him of rape although his guilt was not proven beyond reasonable doubt.[4]

This Court is not persuaded. Accused-appellant's conviction must be affirmed.

First: Peñero argues that it was preposterous on the part of Maria Primavera to become frightened upon seeing him, he being her first cousin. On the contrary, Maria's actuations are in accord with human nature. An unsheathed bolo in one hand, his pants unzipped and his countenance bespeaking his salacious desire, Peñero proceeded to force himself on his hapless victim, thus confirming the latter's fears. Certainly, such lascivious conduct, cannot help but incite fear in any woman, regardless of any relationship with the aggressor.

Second: Accused-appellant argues that Maria could have easily summoned help and assistance as her shouts could have been heard by other people. He then concludes that her failure to shout for help negates the existence of rape. This Court finds his argument specious and hardly credible.

In light of the circumstances prevailing at the time of the incident, it would have been foolhardy on the part of Maria to provoke the anger of accused-appellant, thereby courting further physical harm upon herself and her baby. The workings of a human mind placed under emotional stress are unpredictable and people react differently - some may shout, some may faint, and some may be shocked into insensibility while others may openly welcome the intrusion.[5]

Third: Accused-appellant asserts that if it were true that force was present during the sexual congress, then the rape should have caused Maria to miscarry, or deliver prematurely and bleed. In short, accused-appellant would have us believe that the intercourse occurred without any employment of force on his part considering the absence of resistance on the part of Maria. This is far from the truth.

That accused-appellant was already brandishing an unsheathed bolo, coupled with the fragile condition of Maria are ample reasons to immediately cow her into submission, which submission, however, should not be equated with consent and voluntariness. Indeed, the law does not impose upon a rape victim the burden of proving resistance. Physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for life and personal safety.[6]

The medico-legal examination report[7] likewise rebuts accused-appellant's submission that there was no force employed in the sexual congress. The presence of an abrasion, about 0.5 centimeters at the 6 o'clock position of the vaginal entrance indicates that the victim was not in a proper position or that the penis was forcefully inserted into the vagina.[8] Also, the presence of contusions with a length of 1 x 1 inch, located at the medial aspect of the right elbow suggests that force was employed.[9] The medical findings, coupled with the torn dress and panty,[10] hardly indicate a consensual sexual union. Accused-appellant's contention that force could not have been employed as Maria did not suffer any miscarriage, premature delivery or bleeding failed to convince the court a quo.

Fourth: That accused-appellant and Maria were sweethearts is a puerile excuse often concocted by desperate minds. If true, it would not make sense for them to make love in an unlikely spot, such as the muddy trail chosen by accused, open to the prying eyes of any passerby. Surely, they would not have risked being sighted by other people considering that their supposed affair is illicit and clandestine. They could have easily stayed inside the hut where they allegedly made love for the first time.

When she arrived home, Maria unhesitatingly revealed to her husband what transpired, after which she then reported the incident to the police and submitted herself to medical examination. On the part of accused-appellant,

having failed to specifically identify the two persons who supposedly witnessed the sexual encounter, his uncorroborated testimony does not merit any credence at all. In *People v. Español*,<sup>[11]</sup> this Court held, thus:

Appellant's claim that Teofila fabricated the charge of rape to hide her illicit relationship from her husband is incredible.

We agree with the trial court that appellant's claim is belied by the fact that Teofila reported the crime committed upon her chastity to her husband immediately upon her arrival home. If Teofila had consented to have sexual intercourse with appellant, her natural reaction would have been to conceal it or keep silent as this would bring disgrace to her honor and reputation as well as her family.

Fifth: Findings of fact, as we have reiterated often enough, are within the competence and province of trial courts. Absent any showing that they overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which would have affected the result of the case, we accord highest respect to their factual findings and to their resolution of the issue of credibility.<sup>[12]</sup> In the instant case, there is no compelling reason to disturb these findings. The trial court rightly exercised its discretion when it refused to lend credence to the incredible version of the defense.

WHEREFORE, the decision of the Regional Trial Court-Br. 23 of Naga City in Criminal Case No. T-912 is **AFFIRMED** with the modification that the amount of damages is **INCREASED** from P40,000.00 to P50,000.00 in line with prevailing jurisprudence.

Costs against accused-appellant.

SO ORDERED.

Regalado, (Chairman), Puno, and Mendoza, JJ., concur.

Torres, Jr., J., on leave.

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[1] "It is you whom I am looking for," TSN, April 22, 1991, p. 6.

[2] Docketed as Crim. Case No. T-912, RTC-Br. 30, Tigaon, Camarines Sur; Rollo, p. 5.

[3] Penned by Judge Juan B. Paano, Jr., RTC-Br. 23, Naga City; Rollo, pp. 17-20.

[4] Appellant's Brief, Rollo, pp. 65-66.

[5] *People v. Malunes*, 247 SCRA 317 (1995).

[6] *People v. Talaboc*, 256 SCRA 441 (1996).

[7] Exhibit "A-3," Records, p. 3.

[8] TSN, October 3, 1990, pp. 6-7.

[9] *Supra*, p. 7.

[10] TSN, April 22, 1991, pp. 8, 11-12.

**[11] 256 SCRA 145 (1996).**

[12] *Supra*.

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