

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY GUMAHOB,

G.R. No. 116740. November 28, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Appellant seeks exoneration, claiming that the sexual intimacy that happened between him and complainant was the result of mutual consent. But we reject his implausible story and affirm the trial court's judgment of conviction for rape.

Antecedents

Accused-appellant was charged with the crime of rape in a complaint dated October 21, 1993, subscribed and sworn to by the offended party:[2]

"The undersigned, MARIJUN[3] MONTALBA, the offended party herein, after having been duly sworn, accused JERRY GUMAHUB[4] of the crime of RAPE, committed as follows:

That on the 18th day of October 1993, at 6:30 o'clock in the evening more or less, at Hubangon, Mahinog, Camiguin, Philippines and within the preliminary jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to have sexual intercourse, did, then and there, willfully, unlawfully and feloniously RAPE the undersigned Offended party, by means of force (and) succeeded (sic) in having sexual intercourse against my will.

That in the commission of the crime the following circumstances were present, to wit: (1) With the use of superior stren(g)th (2) It was committed during night time to better accomplish his purpose (3) It was committed inside the house of my uncle and once inside he delivered fistic blows in deffirent (sic) parts of my body rendering me unconscious as a result.

Medical certificate hereto attached.

CONTRARY TO LAW."

Preliminary investigation of the offense was waived by appellant in a motion signed by him.[5] An information was then filed by the prosecutor, adopting in full the allegations of the aforequoted complaint and charging that "accused took advantage of nighttime and much more the girl was alone in the house." [6]

When arraigned, appellant, duly assisted by Atty. Alma M. Parreño of the Public Attorney's Office, entered a plea of not guilty.[7] Thereafter, trial ensued.

In a Decision dated 25 May 1994, the Regional Trial Court, 10th Judicial Region, Branch 28, in Mambajao, Camiguin, presided by Executive Judge Sinforoso V. Tabamo, Jr., convicted the appellant as charged, with the following disposition:[8]

"WHEREFORE, finding the accused Gerry Gumahub guilty of rape beyond reasonable doubt, the Court

hereby strikes a verdict of conviction, and accordingly sentences the said accused to suffer the penalty of reclusion perpetua with all its accessory penalties under Article 41, Revised Penal Code.

The said accused, Gerry Gumahub, is further ordered to indemnify the complainant, Marijun Montalba, in the jurisprudential sum of P50,000.00 in damages, and to pay the costs."

Accused managed to file a timely notice of appeal and elevated the case before this Court.

The Facts

Version of the Prosecution

The testimonial evidence of the prosecution are summed up by the trial court in these words:[9]

"x x x the complainant, Marijun Montalba, stays in the house of his (sic) uncle, Florentino Montalba, in Hubangon, Mahinog, Camiguin, while pursuing her studies at the local high school. Her father, Adriano Montalba, and the rest of her family reside in El Salvador, Misamis Oriental.

In that house of her uncle there are three occupants, namely: Florentino Montalba and Loreto Pantanosas, both of whom are Marijun's uncles, and Marijun herself. The house is about thirty-five (35) meters away from the seashore, on the east, and about ten (10) meters away from the Hubangon Barangay road on the south. To the north of said house are the houses of Tata Badana, Primitiva Jala and Rico Tabamo, respectively. To the south is the house of Boy Galvizo.

At about 6:00 in the early evening of 18 October 1993 Marijun was left alone in the house, because her uncles went out somewhere. The description of the house is shown in a sketch drawn by Marijun (x x x). It has a ground floor, above or over which is a second floor - 5 steps up. It was raining that night.

Marijun was whiling away her moments in bed in her room upstairs. As she stood up or arose from bed she saw the accused Gerry Gumahub standing at the veranda. The accused had nothing on. He was naked. As Marijun approached the door of her room the accused grabbed her, covered her mouth, and forced her against the wall. In that position the accused boxed her in the abdomen several (about 5) times. Then the accused tore Marijun's white straight-cut whole dress, followed by the accused tearing Marijun's bra. The accused forced Marijun down the floor inside her room, and once down, the accused slid Marijun's pair of panties down and off her feet. The accused then placed himself on top of Marijun, inserted his penis into her vagina, at the same time telling her he had long wanted to get and have her sexually, and warned and threatened her not to report the matter to her uncle or he will kill her. Marijun felt pain and lost her consciousness.

When she recovered her consciousness Marijun found herself already wearing a 'city short' pants which she did not herself put on. Her whole dress and panties were missing. Her organ was wet and slippery. Her tattered bra was there (Exh. B). The accused, Gerry Gumahub, was no longer there; he was gone.

Marijun changed and dressed up. When her uncle returned or arrive home she did not report the matter to him because of fear.

Marijun very well knows the accused personally. He resides in one of the stalls inside the public market of Hubangon, Mahinog, Camiguin.

Marijun first confided her experience on the following day, 19 October 1993 to her classmate, Maripaz Rañiego, who in turn relayed the same to her sister, Lourdes Rañiego, who is the Sangguniang Kabataan Chairman of their barangay. Later in the afternoon of 19 October 1993 Marijun confided and related the details of how she was sexually assaulted by the accused to SK Chairman Lourdes Rañiego who in turn reported the matter to policeman Ivanhoe Tabamo. Policeman Tabamo picked up the accused Gerry Gumahub and brought the latter to the police station.

Meanwhile, Marijun reported her sad experience to her two uncles, Florentino Montalba and Loreto

Pantanosas, who at first brought the matter up to the attention of the Barangay Captain of Hubangon, Mahinog, Camiguin. Then from there Marijun and her two uncles proceeded to report the incident to the PNP Station in Mahinog, Camiguin, where Marijun was investigated by a certain Policeman Galochino. An Affidavit was taken of her (x x x), which she subscribed and sworn to before MCTC Judge Eduardo E. Chan. Also, upon advise (sic) of Policeman Galochino(,) Marijun had herself examined by Dr. Jocelyn B. Pulvera at the Camiguin Island Hospital. That was on 20 October 1993 - or two (2) days after the incident.

Dr. Pulvera's examination of Marijun's genitalia involved no instrumentation, as she used only her fore and middle fingers. Dr. Pulvera told the Court that upon her examination of Marijun she found 'hymenal tear of four (4) points (12 o'clock; 9 o'clock; 6 o'clock; and 3 o'clock)' which findings she reflected in the Medical Certificate (x x x) which she issued on 21 October 1993. The hymenal tear were of two (2) days' duration, and may have been caused by any of several causes, like insertion of the male organ, masturbation, and others.

Dr. Pulvera, in her testimony, told the Court that upon her examination she found Marijun's hymen x x x could easily be lacerated. It had lesser blood vessels such that even if lacerated bleeding is minimal or there may be no bleeding at all, or that the bleeding could be unnoticed."

The Defense's Theory

On the other hand, the court a quo capsulized the accused's story and scenario as follows:[10]

"For his defense(,) the accused, Gerry Gumahub, alone and no others, took the stand to tell the Court that the present accusation of rape is a lie.

Alone and without anybody else to testify in his defense the accused Gerry Gumahub told the Court that he had known the complainant, Marijun Montalba, for about a year prior to 18 October 1993.

In substance, Gerry's testimony, conveyed to the Court the idea that he went to the house where Marijun stays at about 6:00 (sic) in the evening of 18 October 1993, because it was Marijun herself who arranged that meeting.

x x x x x x x x

At about 10:00 in the morning of 18 October 1993 he went to the school where Marijun is studying. His purpose was to see and meet and talk with Marijun over snacks. When Marijun came out of the school, Marijun asked him 'Why are you here? I'm afraid we might be seen by somebody.' Marijun further hatched the idea that Gerry should go to her house in the evening of that day, Marijun further assuring Gerry that she will not go with her uncle in seeing or watching the betamax show in a neighbor's (Efren Pacuribot's) house.

So, at about 6:00 in the evening Gerry first went to the house of Efren Pacuribot to find out if Marijun's uncle was already there. Seeing Marijun's uncle already inside the house of Efren watching the betamax show, Gerry proceeded to see Marijun in her uncle's house -- where he was met by two dogs. He knocked at the door which Marijun promptly opened. Marijun let him in. Once inside he embraced and kissed her. She did not resist. Marijun was then wearing a thin white duster. Marijun held him and invited him to go up 'lest we be seen by other people.' In Marijun's room he embraced her, took off her duster and unfastened her bra -- to which Marijun cooperated.

Then he removed Marijun's panties with one of his hands. Marijun cooperated by assisting him with one of her hands in sliding or rolling down her panties off her feet. Marijun then lay down on the floor. Gerry took off his short pants (a city shorts). He kissed her lips and breasts and touched her vagina, at the same time asking Marijun if she would agree to sex, to which Marijun answered 'not now' because 'I'm afraid I might become pregnant.'

Reacting to Marijun's protestations(,) Gerry stood and dressed up and left after telling Marijun that they will not see each other for a time.

Cross-examined, Gerry told the Court that while he was on top of Marijun who was already naked he had no erection yet, although he noticed Marijun was already very excited. He further testified that he started courting Marijun in August 1993. Marijun accepted him immediately.

Gerry further declared that he was surprised at being picked up by the police upon complaint of Marijun. He was also brought before the Barangay Captain of Hubangon, Mahinog, Camiguin, before being brought to the Police Station. He did not tell the Barangay Captain; neither did he tell the police nor anybody else, that what happened in this case was a product of an agreement between him and the complainant.

In rebuttal, complainant Marijun Montalba vehemently denied Gerry Gumahub's assertions: that he courted her; that she accepted his love; that she ever had any agreement with the accused, much less an agreement for him to come to her home."

The Issue

Appellant, through counsel, raises a single issue in this appeal:[11]

"The trial court erred in finding accused-appellant Jerry Gubahob (sic) guilty beyond reasonable doubt despite implied consent of victim Marijon Montalba to the sexual act."

Appellant alleges that complainant's behavior and testimony appear to be inconsistent with her accusation of rape, that appellant courted the complainant and she accepted him, and that the incident took place as a result of their mutual consent.[12]

Likewise, appellant questions the fact that complainant did not resist or fight back during the alleged rape,[13] and did not report the physical injuries purportedly inflicted upon her by the accused when she was undergoing medical examination by the doctor.[14] Appellant considers as unbelievable the claim of the offended party that the accused approached her already naked, and that he hung his clothes on the veranda, in full view of the neighborhood. Since there were "neighbors in every direction, who could see and hear her," the fact that she did not scream or shout upon seeing the appellant standing naked at the veranda simply indicates that she welcomed the accused into her house.[15] Indeed, appellant claims that there was no resistance since there was never any force employed, and on the contrary, he was able to consummate his love with ease because there was consent on the part of the victim.[16]

The Court's Ruling

Appellant's contentions are lacking in merit.

Resistance Is Not Indispensable

Unrebutted is the fact that appellant is taller, bigger and ten years older than complainant, who was fourteen at that time.[17] Considering the accused's physical strength which she had to counter, complainant could not be expected to effectively thwart the assault of appellant. Also, the unexpected, sudden and startling approach made by appellant, combined with his use of physical violence upon her, did not afford complainant opportunity to ward off the aggression. She testified:[18]

"FISCAL VIVARES:

Q

Now can you inform this Honorable Court if there was any unusual incident that happened in the evening of October 18, 1993, - in the evening?

A

Yes, sir.

Q

What was that incident all about?

A

While I was in the house of my uncle, my mouth was suddenly covered and I was choked, and my stomach was boxed.

xxx xxx xxx

Q

Now, did you recognize who was that fellow whom you said suddenly covered your mouth, choke(d) you and box(ed) your abdomen:

A

Jerry (sic) Gumahub (sic).

xxx xxx xxx

Q

What happened when you said that after Jerry (sic) Gumahub (sic) closed your mouth, choked you and boxed your stomach?

A

Jerry used his strength, and he has no more pants this time, he tore my dress, and my panty.

xxx xxx xxx

Q

What happened next?

A

Then he lie (sic) down on top of me and he placed his organ in my organ; and he took advantage on (sic) me.

Q

What did he say, if any, while he was doing this (sic) things?

A

He said that he wanted me longed (sic) before.

Q

What about you, what did you do, when the accused did all these things to you?

A

I struggled but he covered my mouth.

Q

What happened next after Jerry (sic) Gumahub did this?

A

He also boxed my abdomen, my hands and my thighs.

Q

What happened to you after he delivered his blow on your body?

A

I lost consciousness.

Q

Were you able to regain consciousness later?

A

Yes, sir.

Q

What did you discover when you regained consciousness later?

A

I noticed that my organ was wet." (underscoring ours)

Complainant after being boxed in the stomach by appellant could no longer prevent the latter from forcibly removing her panty because she was weakened by the blows and in fact passed out.[19] What further stopped complainant from resisting was that appellant threatened her with death while in the process of consummating his evil design. In her testimony she stated:[20]

"FISCAL VIVARES:

Q

What was the threat all about?

A

He said that he will kill me if I report the matter.

Q

When did this threat made by Jerry (sic) Gumahob, was it before the incident?

A

The threat was made at the time he lay on top of me."

Besides, considering the very young age of the offended party, she may have been overcome by fear of physical harm or death, especially since appellant had already inflicted several blows upon her person. We have already held that "(t)he law does not in this instance impose a burden on the rape victim to prove resistance. The argument that complainant did not exert sufficient resistance is bereft of merit for in rape cases it is not necessary that the victim should have resisted unto death. Physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself, against her will, to the rapist's embrace because of fear for life and personal safety." [21] We have also stated before that the workings of the human mind placed under a

great deal of emotional and psychological stress (such as during rape) are unpredictable, and different people react differently. There is no standard form of human behavioral response when one is confronted with a strange, startling, frightful or traumatic experience -- some may shout, some may faint, and some may be shocked into insensibility.[22]

Due to her tender age, complainant could not be expected to act like an adult or a mature and experienced woman. From another angle, intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. There can be no hard and fast rule. And in such a case as this where the victim had been cowed into submission, rendering resistance useless, it is unreasonable to expect her to resist with all her might and strength.[23]

Appellant's Contentions Are Baseless

Undeserving of consideration are the contentions of appellant that it is unbelievable that he would take off and hang his clothes at the veranda in full view of the neighborhood, and that he would approach the complainant already naked.[24] Appellant failed to appreciate the testimony of complainant to the effect that the veranda of the house was covered by walls (and shielded from view) although they do not reach the top of the first floor.[25]

Equally bereft of merit is appellant's faulting the prosecution for failing to present complainant's torn apparel during the trial. Exhibit "B" for the prosecution is the torn bra of complainant, and this piece of evidence appellant neglected to take note of in raising this argument. Time and again, we have held that the non-presentation of the torn dress and underwear of a rape victim does not destroy the case for the prosecution, where there is otherwise sufficient and convincing evidence to prove the rape beyond reasonable doubt. Such clothes are not essential, and need not be presented, as they are not indispensable evidence to prove the corpus of the crime of rape. The absence thereof does not negate the truth of a rape complaint nor affect the credibility of the victim's testimony.[26]

Appellant's Sweetheart Theory is a Mere Fabrication

As for the appellant's "sweetheart theory," upon which he casts complete reliance, with the sole exception of his uncorroborated and self-serving testimony, appellant was never able to present any proof to show that he and the complainant were indeed sweethearts, that he had courted her and that she had accepted him. There were no letters or notes, no photos or mementos, nothing at all to evidence their alleged love relationship. It is clear that the same is but a mere concoction by appellant in order to exculpate himself from any criminal liability.[27] As aptly observed by the trial court, the accused, from the time of his arrest and all throughout his detention (no bail having been posted), told no one at all about his alleged relationship with the girl. He even waived his right to preliminary investigation. It was only when he took the witness stand to testify in his own behalf for the first time on March 11, 1994 that he exploded his "bombshell". And no one else testified to corroborate his allegation about their alleged romantic relationship. the court a quo also noted that "the accused gave no explanation why the complainant whom he claims as his sweetheart would place him in such a bad and serious fix as this."

Trial Court Found Complaining Witness Credible

The court a quo found the testimony of the complainant to be most worthy of full credence. It succinctly held, and we quote with approval:

"The Court strains its efforts and energies in vain for any reason why the complainant in her pristine youth and innocence should undergo the travails of filing a complaint and exposing herself to the concomitant shame and ridicule and even submit herself -- her private parts -- to be examined, if it were not to bring her tormentor to justice.

xxx xxx xxx

In the present case, x x x, the Court is faced with the simplicity and innocence of a barrio lass, a young second year high school student in whose personality and in whose testimony the Court has found no adulteration and concoction but the naked and simple truth engendered by her spontaneous and straightforward declarations.

On the other hand, the defense version only exhibited accused's perversity and callousness, and serves nothing less than (to) add insult to the natural injuries the complainant has suffered in this case. For, while the accused testified that this was his first experience with the complainant, he portrayed the latter as having cooperated in his sexual advances, which is most unnatural."

WHEREFORE, premises considered, the assailed Decision is **AFFIRMED** in toto. No costs.

SO ORDERED.

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

[1] Per TSN, March 11, 1994, p. 83, the name of accused-appellant is spelled "Gerry Gumahob". However in the Sworn Complaint, rollo, p. 5, his name is spelled "Jerry Gumahub".

[2] Original Records, p. 1.

[3] Sometimes spelled as 'Marijon' in the TSN.

[4] Also spelled as 'Gumahob', especially in the TSN.

[5] Original Record, p. 18.

[6] Ibid., p. 19.

[7] Ibid., p. 26.

[8] Ibid., pp. 71-72.

[9] Original Records, pp. 60-64; rollo, pp. 10-14.

[10] Original Record, pp. 64-66; rollo, pp. 14-16.

[11] Appellant's Brief, p. 6; rollo, p. 43.

[12] Ibid., pp. 48-50.

[13] Ibid., p. 45.

[14] Ibid., p. 45.

[15] Ibid., p. 47.

[16] Ibid., p. 49.

[17] TSN, January 13, 1994, p. 73.

[18] Ibid., pp. 37-40.

[19] Ibid., p. 65.

[20] Ibid., p. 43.

[21] People vs. Padre-e, 249 SCRA 422, 429, October 24, 1995, citing People vs. Dusohan, 227 SCRA 87,

October 5, 1993, *People vs. Dio*, 226 SCRA 176, September 8, 1993, and *People vs. Angeles*, 222 SCRA 451, May 21, 1993.

[22] *People vs. Malunes*, 247 SCRA 317, 326, August 14, 1995 citing *People vs. Alib*, 222 SCRA 517, May 24, 1993; *People vs. Abordo*, 224 SCRA 725 July 23, 1993; *People vs. Lagrosa, Jr.*, 230 SCRA 298, February 23, 1994. See also *People vs. Arnan*, 224 SCRA 37, June 30, 1993.

[23] *People vs. Bantisil*, 249 SCRA 367, 377, October 18, 1995.

[24] Rollo, p. 46.

[25] TSN, January 13, 1994, p. 53.

[26] *People vs. Empleo*, 226 SCRA 454, 468, September 15, 1993, citing *People vs. Alfonso*, 153 SCRA 487, August 31, 1987, and *People vs. Poculan*, 167 SCRA 176, November 9, 1988.

[27] *People vs. Casao*, 220 SCRA 362, 366, March 23, 1993.

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