

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTON BURGOS, JOHN EVANGELISTA, ROOSEVELT ROSETE AND FRANCISCO CABAÑGAN, ACCUSED. ANTON BURGOS, ACCUSED-APPELLANT.

G.R. No. 117451. September 29, 1997

Ponente: MELO, J.

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MELO, J.:

Accused-appellant Anton Burgos, together with accused John Evangelista, Roosevelt Rosete, and Francisco Cabañgan, was charged with the crime of forcible abduction with rape before the Regional Trial Court of the Second Judicial Region (Branch 24, Echague, Isabela) in an Information reading:

That on or about the 21st day of August 1992, in the municipality of Jones, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and helping one another, armed with a knife, did then and there willfully, unlawfully and feloniously, by means of force and intimidation and with lewd design, take and bring away with the use of a motorized tricycle, Lilibeth M. Abad against her will and consent and brought her to an abandoned house and once thereat, the accused Anton Burgos did then and there willfully, unlawfully and feloniously had carnal knowledge with the said Lilibeth M. Abad, a girl of 18 years old against her will and consent.

(p. 4, Rollo.)

All the accused pleaded not guilty to the charge when arraigned. After trial, the court a quo rendered the now appealed decision acquitting accused Evangelista, Rosete, and Cabañgan for insufficiency of evidence, but convicting accused-appellant Burgos, who was sentenced to suffer the penalty of reclusion perpetua, aside from being ordered to pay Lilibeth M. Abad P100,000 in moral damages, without subsidiary imprisonment in case of insolvency (p. 20, *Ibid.*).

The trial court's verdict of conviction is based on the uncorroborated testimony of the victim, Lilibeth Abad, which was given complete credence. Lilibeth's account is to the effect that at the time of the incident, she was 19 years old and a resident of Barangay Disimpit, Jones, Isabela studying to become a teacher at the Philippine Normal University in Alicia, Isabela. On October 21, 1992, she went to school to get her grades, after which she decided to go home. After crossing the river at Jones, she boarded a tricycle together with six other people – Maribel Lagonilla, Rodelita Batoon, Eufracia Dulay, and accused Roosevelt Rosete, John Evangelista, and Francisco Cabañgan. Accused-appellant Anton Burgos was driving the tricycle (pp. 12-13, *Ibid.*).

By the time they got to Disimpit, all the female passengers, except Lilibeth, had alighted. She asked accused-appellant to bring her home. Instead of doing so, accused-appellant turned around the tricycle towards the direction of San Agustin, Isabela, saying that he had to go back and get something. Lilibeth protested but her abductor paid no heed. She tried to get off the tricycle but John Evangelista, seated on the roof of the tricycle, got down and sat beside her, thus blocking her way. At Palagao, she heard accused Rosete, Evangelista, and

Cabañgan whispering to each other. Pretending that they had to urinate, all three, one after the other, jumped off the moving tricycle (p. 13, Ibid.).

Lilibeth shouted for help but apparently, no one heard her. Accused-appellant stopped in front of a house about 500 meters from the highway at Barangay Nemmatan, San Agustin, Isabela. Pulling out a knife, accused-appellant ordered Lilibeth to get off the tricycle. He then talked to a man standing in front of the house. When the man left, accused-appellant pulled Lilibeth inside the house and with the knife pointed at her neck, he dragged her upstairs and into a room. She resisted (p.14, Ibid.).

Accused-appellant threatened to kill Lilibeth should she try to run away. He then set the knife on the floor and undressed. Turning his attention to Lilibeth, he removed her pants. She resisted, prompting accused-appellant to tear off her bra and panties. After forcing her to lie down, he went on top of her, kissed her, mashed her breasts, and finally was able to penetrate her. She resisted but accused-appellant proved to be much stronger. She was hurt. In just about two minutes, it was over and both laid on the floor. After ten minutes, accused-appellant again had sexual intercourse with Lilibeth. Once more, her resistance proved futile (pp. 14-15, Ibid.).

Lilibeth pleaded with accused-appellant to bring her home, but was told it was already too late in the night. Crying and unable to sleep, she just laid down on the floor, with accused-appellant nearby. At about 11 o'clock, Lilibeth was again ravished (p. 15, Ibid.).

Early the following morning, at around 4 o'clock, accused-appellant and Lilibeth left the house. He dropped her off somewhere near the riverbank at Jones. From there, Lilibeth walked towards a house owned by a cousin where she stayed until noon that day when she was fetched by her mother, whom Lilibeth forthwith informed of what had happened to her (p. 15, Ibid.).

Later that evening, Lilibeth was brought to the Jones Medical Hospital where Dr. Joaquin Fabros examined her. The medical examination yielded the following results:

PE - CONSCIOUS COHERENT COOPERATIVE NOT IN C-R DISTRESS.

OVERALL BODILY SURFACE

NO ABRASION OF ELBOW & OTHER PART OF THE BODY

NO HEMATOMA; NO LACERATION ON ANYPART OF THE BODY

IE - VULVA/PUDENDA - NO SWELLING

NO HEMATOMA; NO LACERATION

SLIGHT TENDERNESS DURING MANIPULATION/EXAMINATION

LABIA MAJORA - ON CLOSE APPPOSITION

PRESENCE OF ABRASION ABOUT 0.5 X .05 CM ON THE POSTERIA COMISSURA FOURCHET

HYMEN - NO FRESH & OLD LACERATION

NO SWELLING, NO HEMATOMA, NO BRUISING

HYMENAL OPENING - ACCEPTS INDEX FINGER AND MIDDLE FINGER ON ATTEMPT OF INSERTION WITH TENDERNESS ON FURTHER INSERTION OF EXAMINING FINGER. HYMEN OFFERED VARYING DEGREE OF RESISTANCE & ELASTICITY DURING EXAMINATION

CERVIX: CLOSE; NULLIPARIOUS TYPE

NO LACERATION; NO EROSION

CERVICAL SMEAR AND MICROSCOPIC EXAM.

NOT DONE HUE TO MULTIPLE VAGINAL DOUCHING OF THE VICTIM AND LONG TIME LAG OR INTERVAL FROM INCIDENT TO TIME OF EXAMINATION

(pp. 15-16, Ibid.).

Accused-appellant's version of the story, on the other hand, is to the effect that he had an agreement with Lilibeth, just before she boarded his tricycle, that they would go to San Agustin. When they were all alone, they proceeded to Barangay Nemmatan where they visited his uncle, Villamor Corpuz, to whom accused-appellant introduced Lilibeth as a cousin. After the short visit, they left for Disimpit. He asked Lilibeth what their alibi would be since it was already late. Lilibeth replied "Teach me." He proposed that they spend the night in the house of another uncle, Albano Corpuz, just across the first house they visited. She agreed. When they got there, he asked permission from his uncle if they can spend the night there. His uncle protested, accused-appellant being a married man. Accused-appellant answered that she is his cousin from his father's side of the family. His uncle finally agreed (pp. 25-33, tsn, May 10, 1994).

They occupied a room upstairs. Accused-appellant denied having sexual intercourse with Lilibeth, asserting that they only engaged in kissing and some petting during which he only fondled her most private part. Afterwards, they slept. They left the house at 4:30 o'clock in the morning and returned to Disimpit. They parted ways near the foot of the bridge at Jones to avoid being seen by anyone. To prove that what happened was voluntary on the part of Lilibeth, accused-appellant presented her photograph supposedly given to him that night, though there is nothing written thereon since they did not have a pen at the time (pp. 32-37, Ibid.; Exhibit "3", p. 130, Record).

Accused-appellant's plea for reversal and acquittal is premised on the following arguments: 1. There was no rape committed. The medical findings do not prove that Lilibeth had engaged in sexual intercourse recently, let alone was forced to. Her hymen was intact without any bruises, lacerations, swelling or any other injury; so with the other parts of her vagina. In fact, her whole body does not show any bruises, hematoma, lacerations, or any other injury, thus belying her claims of violence and physical force employed by accused-appellant (pp. 8-14, Accused-Appellant's Brief).

2. Assuming that there was sexual intercourse, Lilibeth consented to the same because she could not have enjoyed the experience had accused-appellant forced her, thus:

Atty. Lelina:

Q: According to you, you felt pain during the first, second and third sexual intercourse. During these sexual acts, did you not feel any sensation?

Court:

Atty. Lelina, you better clarify that. What is that word "sensation"? It might mean sensation of enjoyment or pain, in fairness to the witness.

Atty. Lelina:

Yes.

Q: During these three sexual acts that Anton Burgos had committed unto you, according to you, you felt pain. Was there any moment after you felt that pain that you felt a sensation of enjoyment?

A: There was, Sir.

Q: This is in the first sexual act or in all three sexual acts?

A: In all, Sir.

(pp. 49-50, tsn, February 17, 1994.)

3. The testimony of Lilibeth is replete with inconsistencies and, therefore, does not deserve the weight given to it by the trial court. At one point, she admitted lying to the court while on the witness stand (pp. 17-19, Accused-Appellant's Brief).

4. The trial court failed to consider vital evidence indicating the innocence of accused-appellant. Thus, Roberto Bautista, a councilman of Barangay Disimpit, testified that he saw accused-appellant and Lilibeth at around 5 o'clock in the afternoon on the day of the incident; both of them were laughing. Albano Corpuz, an uncle of accused-appellant, testified that when accused-appellant asked him if they could spend the night at the former's house, there was no indication that Lilibeth was being forced or intimidated by accused-appellant; that while she was being introduced by accused-appellant as a cousin, she was holding accused-appellant's arm. Accused-appellant himself, of course, contends that what happened resulted from an agreement between him and Lilibeth. Then, there is Dr. Joaquin Fabros, Jr. whose medical examination negates the allegations of sexual intercourse through physical violence (pp. 19-22, *Ibid.*).

The People, through the Office of the Solicitor General argues to the contrary, contending that the charge of forcible abduction with rape has been more than sufficiently established by the testimony of Lilibeth (pp. 11-30, Appellee's Brief).

In disposing of this appeal, the Court is guided by three oft-repeated principles.

First, in criminal cases such as the one on hand, the prosecution has to show the guilt of the accused by proof beyond reasonable doubt. Absolute certainty, precluding the possibility of error, though an ideal, is not required. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction (Section 2, Rule 132, Revised Rules on Evidence).

Second, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal, unless there be special reasons to do so, as when the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value, likely to change the outcome of the case have been overlooked by the lower court, or when the assailed decision is based on a misapprehension of facts (*People vs. Godoy*, 250 SCRA 676 [1995]).

Third, rape cases are governed by the following guidelines and principles:

(1) An accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove;

(2) In view of the intrinsic nature of the crime of rape where only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and

(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 (*People vs. Bayani*, G.R. No. 120894, October 3, 1996).

Applying these principles, the Court cannot sustain the conviction of accused-appellant Burgos for the crime of forcible abduction with rape.

The testimony of Roberto Bautista is very material for it raises reasonable doubts in regard to the culpability of accused-appellant in the crime charged. We refer to the pertinent testimony:

Atty. Lelina:

Q

On October 21, 1992, at around 5:00 in the afternoon, do you remember where were you?

A

Yes, Sir

Q

Please tell the Court where were you at that time.

A

I was on my way home at around 5:00 in the afternoon of October 21, 1992, Sir.

Q

And where is that place where you want to go home?

A

At Disimpit, Sir.

Q

At that precise date and time, do you remember having seen Anton Burgos, the accused in this case?

A

Yes, Sir.

Q

What was Anton Burgos doing at that time?

A

They were riding on a tricycle, Sir.

Q

Was he alone or he has a passenger?

A

He had a companion.

Q

Who is this companion of Anton Burgos?

A

Miss Lilibeth Abad, Sir.

Q

Do you know this Lilibeth Abad?

A

Yes, Sir.

Q

Why do you know her?

A

She is our barriomate, Sir.

Q

What was Lilibeth Abad doing at the time aside from riding on the tricycle of Anton Burgos?

A

When I met them, Sir, they were laughing.

Q

Lilibeth Abad when she testified in this court stated that she was shouting and asking for help because allegedly Anton Burgos wanted something bad against her. How true is that?

A

Nobody asked for help, Sir.

Court:

Q

According to you, you saw them laughing. Was the tricycle running at the time or not?

A

It was running, Sir, but in slow pace.

Q

What were they laughing at?

A

I do not know, Sir.(pp. 40-42, tsn, March 29, 1994).

The behavior of accused-appellant and Lilibeth as narrated above does not seem so far-fetched nor is it by itself incredible. Also, the questions on cross-examination of this witness did not show his testimony to be incredible or unreliable and thus should be rejected outright, or that he is biased. And yet, the assailed decision failed to mention this vital testimony or why it should be rejected.

That the trial court lent complete credence to the uncorroborated testimony of Lilibeth regarding the rape is not, by itself, erroneous, for it is perfectly acceptable to sustain a conviction of rape based solely on the uncorroborated testimony of the victim, where her testimony, per se, is credible, natural, convincing, and free from serious contradiction, and her sincerity and candor, free from suspicion (People vs. Nuñez, 208 SCRA 34 [1992], citing People vs. Co, 163 SCRA 453; People vs. Quidilla, 166 SCRA 778; People vs. Pacnis, 165 SCRA 609; People vs. Averro, 165 SCRA 130; People vs. Mejias, 168 SCRA 33; People vs. Tabago, 167 SCRA 65; and

People vs. Ramos, 167 SCRA 476). But this is not so in the case at bench. Certain facts, even though not ultimately material in a prosecution for rape, should have alerted the trial court against unquestionably accepting Lilibeth's testimony as they may invariably show the unreliability of the testimony being considered.

It stands out that she twice retracted her statements while on the witness stand. First, when asked if accused-appellant during the commission of the rape ejaculated, she answered in the negative (pp. 18-19, tsn, February 15, 1994; pp. 43-44, tsn, February 17, 1994). When confronted with her contrary statement in the preliminary examination conducted by Judge Zipagang (p. 15, Record), she explained:

Atty. Lelina:

Q

Again as appearing on page 15 of the record, you were asked on question of then Judge Luis Zipagang this question: "Did he succeed in inserting his penis?" And your answer was: "Yes, Sir, and at the same time doing the push and pull and then I felt fluid coming out from his penis." Were you asked this question and you gave that answer?

A

Yes, Sir.

Q

And you realized what you have answered to Judge Zipagang?

A

Yes, Sir.

Q

That there was fluid coming out from his penis, meaning semen came out from the penis of the accused?

A

Yes, Sir.

Q

Would you still insist that he did not ejaculate?

A

That one on the record is true, Sir.

Q

So what you have stated a while ago on questions of the court and this representation is not true?

A

Yes, Sir. (pp. 46-47, tsn, February 17, 1994)

Again, when asked where she was when accused-appellant and the occupant of the house (Albano Corpuz) where she was taken were talking, she said she was right beside them (p. 13, tsn February 15, 1994; p. 35, tsn, February 17, 1994). But when reminded of what she said in the preliminary examination, she recanted:

Atty. Lelina:

Q

Now, in the records of the case of the preliminary examination conducted by Honorable Judge Luis Zipagang there is a question found on page 13 of this records which I quote: "How far were (you) from Anton Burgos when the latter talked to that man who is the occupant of that house? Answer - It was a little bit far because I stayed outside the house while the two talked inside the house." Do you remember having been asked this question and you gave this answer?

A

No, Sir.

Q

You do not remember?

A

No, Sir

Q

And you confirmed a while ago the contents of this preliminary examination conducted on you?

A

Yes, Sir.

Q

So do you still want to retract your statement now or your statement held at the preliminary examination?

A

That one contained in that, Sir. (Witness referring to the record.)

Q

You mean that one found on page 13 of the record is correct?

A

Yes, Sir.

Q

You are now retracting what you said that you were also inside the house?

A

Yes, Sir.(pp. 35-37, tsn, February 17, 1994.)

On a more material matter, when asked how many times accused-appellant had sexual intercourse with her, Lilibeth's answers vary. In the preliminary investigation, she said only once (p. 15, Record); on cross-examination, she said thrice

Atty. Lelina:

Q

Also on the same record, page 15 of the record, a question and answer appears: "Question - How many times did he perform the sexual intercourse to you?" And your answer was: "Only once, Sir." Were you asked this question and you gave your answer?

A

Three, Sir.

Q

My question is, were you asked this question and you gave your answer?

A

I told him it was three, Sir.

Q

Are you very sure of that?

A

Yes, Sir.

Q

So what you have stated here is not correct to Judge Zipagang at the time?

A

Yes, Sir.(p. 47, tsn, February 17, 1994)

While conflicts between Lilibeth's testimony and her sworn statement would not ordinarily and necessarily discredit her, still, these are major details that bear on important matters. The same cannot simply be ascribed to forgetfulness or confusion.

The single, most damaging flaw in Lilibeth's testimony has to do with her earlier quoted statement that she experienced a "sensation of enjoyment" in all three sexual acts allegedly committed upon her by accused-appellant. It does not appear that such statement was made inadvertently, as in fact, the trial court itself ordered counsel for the accused to clarify the term "sensation", whether it be one of pain or of enjoyment, in fairness to Lilibeth. That statement by the private offended party remains unrebutted and unexplained by the prosecution. It is quite perplexing to the Court how Lilibeth can complain of being raped and yet say, under oath, that she enjoyed the experience. In *People vs. Jervoso* (124 SCRA 765 [1983]), the Court held that "it is well-nigh impossible for any woman to experience orgasm while being assaulted by a rapist." Although there is nothing on record indicating that Lilibeth reached orgasm while accused-appellant was having sexual intercourse with her, *People vs. Jervoso* should be applicable by analogy for the basis is similar, that is, reaching orgasm and experiencing a sensation of enjoyment, as Lilibeth admitted in the case at bar, disprove force and/or intimidation but on the other hand, suggest or denote consent willingly, if not eagerly, given.

All the foregoing may but be considered by the Court as casting reasonable doubts with regard to the guilt of accused-appellant Burgos. Therefore, as the People has failed to demonstrate the guilt of the accused-appellant by the required measure of proof, we cannot give our concurrence and affirmance to the decision of the trial court convicting accused-appellant of forcible abduction with rape.

WHEREFORE, the appealed judgment is hereby REVERSED and SET ASIDE. Accused-appellant Anton Burgos is hereby ACQUITTED on reasonable doubt. His immediate release is hereby ordered unless there be other legal grounds to hold him.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Francisco and Panganiban, JJ., concur.

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