

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR BAYRON Y MANTILLA, ACCUSED-APPELLANT.

G.R. No. 122732. September 07, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision[1] of the Regional Trial Court of Butuan City (Branch 1), finding accused-appellant guilty of rape and sentencing him to reclusion perpetua and to pay complainant P50,000.00 as moral damages.

The information against accused-appellant alleged:[2]

That [at] or about 12:30 o'clock in the early morning of January 16, 1994, at Tabu-an Section, Langihan, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one Susan Agcol y Duamadera against her will.

The prosecution's evidence shows the following: Complainant was, at the time material to this case, 37 years of age, married and had three children. She sold fruits and vegetables from a stall which she rented at the Langihan public market in Butuan City. Every Saturday night she slept in her stall so that she could open her store early Sunday morning, which is market day. In the evening of January 15, 1994, which was a Saturday, complainant was in her stall, lying on a bamboo bench which also served as her bed. The stall had a door which was closed by a rope at the top. To open it, the door only had to be pushed as it had no lock. On the two preceding Saturdays, complainant did not sleep in her stall. Apparently, accused-appellant used the stall as his sleeping quarters during complainant's absence. On the night in question, he went to the stall and was surprised to find complainant there. He said "Oy, naa man diay natulog, kinsay mong kauban?" ("Oh, somebody is sleeping here, who is your companion?"). Complainant, who was still awake, was herself startled. She asked accused-appellant what he wanted. Without a word, accused-appellant left. Complainant followed outside to see that accused-appellant was gone. Then she went back to her store and lay on the bench again. After about 30 minutes, accused-appellant came back, armed with a knife. He ordered complainant, "Higda, ayaw paglihok, ayaw pagbanha" ("Lie down, don't move and keep quiet"). Complainant immediately recognized accused-appellant. To parry the knife, she held accused-appellant's wrists. Accused-appellant tried to free himself from complainant's hold by suddenly moving the knife downwards and, as a result, cut the little finger of complainant's left hand. Complainant became frightened and she started to tremble.[3]

Accused-appellant knelt on the bench at complainant's feet and, at knife point, ordered her to unbutton her pants. As she stalled, accused-appellant pulled down her loose trousers and underwear with his left hand.

Accused-appellant then got off the bench, pulled his pants and underwear all the way down and told complainant to lie down or he would kill her. Accused-appellant went on top of complainant and proceeded to have sexual intercourse with her. While accused-appellant was still doing the sex act, complainant told him that she wanted to

go to the toilet on the pretext that she had an upset stomach. Accused-appellant told her, “Not yet, you respond first.” After a while, complainant again told accused-appellant that she wanted to go to the toilet. This time, accused-appellant agreed to let her go but not until he had left first.[4]

As soon as accused-appellant had left, complainant ran out into the street, still fastening her pants, and asked for help. Some people responded. They got a pedicab and told its driver to take complainant to the nearby Langihan police sub-station. There she filed a complaint for rape against accused-appellant. The police took complainant along to the Langihan public market, but accused-appellant was no longer around when they arrived. At around 9:00 of the same morning, complainant went to the Butuan City General Hospital where she was examined by the physician on duty Dr. Carmelita T. Arante.[5]

Dr. Arante issued a medical certificate stating the following:[6]

- = Introitus parous, lab. findings: vaginal smear (+) for spermatozoa.
- = Hematoma right lat. neck.
- = Lacerated wound, small finger, left.

On the witness stand, Dr. Arante stated that the positive finding of spermatozoa in private complainant’s vaginal canal indicated that sexual contact preceded the examination. Upon request of the defense, Dr. Arante sketched the location of the wound in the small finger of complainant’s left hand which she indicated to be at the side of the middle joint, almost horizontal in direction.[7]

Accused-appellant admitted having sex with complainant on January 16, 1994, but he claimed it was with the consent of complainant. His story is that, at around 12:30 in the early morning of that day, he went to his stall in the public market of Langihan, Butuan City; that upon entering, he was surprised to find complainant sleeping there; that although he did not know her personally, he knew her to be one of the fruit and vegetable vendors in the market. According to accused-appellant, in the early morning in question, he went near complainant and touched her feet and she laughed; that he asked her why she was there, to which she allegedly answered, “I just sleep here.” Accused-appellant said he then went out and, after about two minutes, he went back inside the stall. He then took off his clothes even as complainant did the same. They then engaged in sexual intercourse which lasted for about two minutes during which he reached climax and ejaculated. He could not tell whether complainant had an orgasm as she did not make any reaction during their coitus.[8]

Accused-appellant said he afterwards left to have snacks, but, on his way back to the stall, he met the president of their labor group who warned him that policemen were looking for him. For this reason, he went to the house of his brother Renato Bayron in Obrero, Butuan City and, after three days, he surrendered to the Langihan police sub-station.

He was later detained at the city jail in Libertad, Butuan City, where it appears complainant paid him a visit. Complainant admitted during her cross-examination that she saw accused-appellant at the Langihan police station, and again at the city jail to which he was later transferred. But, in those instances, complainant said she went to these places to check whether accused-appellant was kept in jail. This is because although he had surrendered, the Langihan policemen allowed accused-appellant to move about freely. They also told complainant that they needed accused-appellant there to cook meals for them.

Accused-appellant claimed, on the other hand, that complainant saw him to ask for money for her support and that of her children because her husband had left them. Accused-appellant said he agreed on condition complainant dropped this case. Accused-appellant presented Herculio Bustillo, an inmate of the city jail, who testified that sometime during the first week of April 1994, while he was in the visitor’s room of the city jail, he saw complainant talking with accused-appellant on a tricycle parked beside the jail warden’s office. Complainant

allegedly looked happy as she often laughed and even gave accused-appellant a pack of cigarettes.[9]

On cross-examination, Bustillo said he was about 20-30 meters away from accused-appellant and complainant, and thus he did not hear what they were talking about. He claimed that accused-appellant was a “live-out prisoner,” who ran errands for other inmates in the prison compound.[10]

On August 29, 1995, the lower court rendered its decision the dispositive portion of which states:[11]

WHEREFORE, beyond reasonable doubt, the Court is completely convinced from the evidence adduced by the prosecution of the guilt of the accused. The penalty of RECLUSION PERPETUA is therefore imposed upon EDGAR BAYRON y MANTILLA, the same to be served by him entirely at the Davao Prison and Penal Farm, Panabo, Davao del Norte. He is entitled to the full benefit of his preventive imprisonment, conformably to Article 29 of the Revised Penal Code, as amended. Accused is ordered to indemnify the offended party, Susan D. Agcol, the sum of P50,000.00 representing moral damages.

IT IS SO ORDERED.

First. In this appeal, accused-appellant insists that complainant consented, if not encouraged him, to have sexual intercourse with her.

It is true the Court has sustained the defense of consensual sex in a number of rape cases.[12] But, in those cases, evidence was presented, consisting of letters and the testimonies of witnesses, to corroborate the claim of the accused that the alleged rape was actually a sexual intercourse between consenting adults. Here, not only is there no evidence of this nature presented but, on the contrary, the evidence shows that the parties did not know each other before the alleged tryst on January 16, 1994. If accused-appellant’s claim were to be believed, within minutes of their meeting, he and complainant simply engaged in a sexual intercourse with not even nary a word said between them. We find this claim to be highly incredible and contrary to ordinary human behavior. No woman, much less a married one with three children, would just lie with a complete stranger.

Indeed, complainant’s conduct immediately after accused-appellant had left belie the latter’s claim that they had engaged in voluntary sexual intercourse. She ran outside the stall, still fastening her pants, to ask help from the people gathering on the street. She immediately reported the matter to the Langihan police and afterwards submitted to a physical examination at the Butuan City General Hospital at 9:00 that morning. The examining physician found not only spermatozoa in complainant’s vaginal canal but also a cut in the small finger of her left hand and hematoma on the right side of her neck, confirming complainant’s allegation that accused-appellant had forced her to have sexual intercourse with him.

These circumstances are consistent with the conduct of one who has just undergone a harrowing experience. As this Court has pointed out, the conduct of a woman immediately following the alleged assault is of utmost importance as it tends to establish the truth or falsity of her claim.[13] If complainant had not been forced and intimidated into submitting to the lustful designs of accused-appellant, her natural reaction, as a married woman, would have been to conceal her illicit activity instead of denouncing it immediately as rape, for otherwise, her conduct would constitute adultery.[14]

Accused-appellant cites the fact that complainant visited him in jail as proof of his claim that they had sex consensually. But complainant testified:[15]

[COURT]

Q Did you visit Edgar Bayron in jail?

A Yes, Your Honor.

Q [W]here was Edgar Bayron when you first visited him?

A He was inside the detention cell at Langihan sub-station.

Q [W]hy did you go there? Why did you visit him there?

...

A . . . I was following-up some papers and I also verified whether he was still there and some of my cousins also wanted to see him.

Q Were you able to visit Edgar Bayron when he was already in the city jail at Libertad?

A Yes, once.

Q Why did you go there?

A Because the police officers said that they would not transfer him because as no one could cook for them. So I verified, I went to the city jail at Libertad to verify if he was already brought there or not.

Indeed, that complainant could not have gone to the city jail to ask for support from accused-appellant because her husband had allegedly left her, is confirmed by the presence of complainant's husband during the trial^[16] to give moral support to her.

Nor is the fact that accused-appellant is younger than complainant relevant. As held in *People v. Manggasin*,^[17] for rape to exist, it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard and fast rule. It is, therefore, enough that it produces fear that if the victim does not yield to the bestial demands of the accused, something dire would happen to her. In this case, rape was committed by intimidation. Complainant was forced to submit to accused-appellant's will at knife point. She was in fact injured as she resisted accused-appellant's advances. The fact that she was 37 years of age while accused-appellant was 27 at the time of the incident is irrelevant.

Second. The trial court correctly sentenced accused-appellant to reclusion perpetua. Under Art 335 of the Revised Penal Code, rape is punishable by reclusion perpetua to death when the crime is committed with the use of a deadly weapon. This circumstance must, however, be alleged in the information because it is the nature of a qualifying circumstance.^[18] It was not alleged in this case, with the result that it can only be treated as a generic aggravating circumstance. However, neither this nor accused-appellant's voluntary surrender, which constitutes a generic mitigating circumstance, can modify the penalty to be imposed because under Art. 63, a single indivisible penalty (such as reclusion perpetua) is to be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In accordance with our recent decisions,[19] complainant should be ordered paid P50,000.00 as indemnity in addition to the amount of P50,000.00 ordered paid to her as moral damages by the trial court.

WHEREFORE, the decision of the Regional Trial Court of Butuan City is AFFIRMED with the MODIFICATION that accused-appellant is further ordered to pay complainant the amount of P50,000.00 as indemnity.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, and Buena, JJ., concur.

[1] Per Judge Cipriano Alvizo, Jr.

[2] Records, p. 1.

[3] TSN, pp. 3-5, Aug. 31, 1994; TSN, pp. 14-15, Sept. 26, 1994.

[4] TSN, pp. 8-10, Aug. 31, 1994.

[5] Id., pp. 11-13.

[6] Records, p. 7; Exh. B.

[7] TSN, pp. 4 and 6, Nov. 6, 1994.

[8] TSN, pp. 3-4, 12, Dec. 14, 1994.

[9] TSN, pp. 3-6, March 17, 1995.

[10] Id., pp. 7-8, 12-13.

[11] Rollo, p. 21; Decision, p. 13.

[12] People v. Domogoy, G.R. No. 116738, March 22, 1999; People v. Salem, 280 SCRA 841 (1997); People v. Godoy, 250 SCRA 676 (1995); People v. Gabilan, 115 SCRA 1 (1982); People v. Castro, 58 SCRA 473 (1974).

[13] People v. Miñano, 220 SCRA 681 (1993); People v. Fabro, 191 SCRA 386 (1990).

[14] Under Art. 333 of the Revised Penal Code, adultery is committed by any married woman who shall have sexual intercourse with a man not her husband.

[15] TSN, pp. 19-20, Sept. 26, 1994.

[16] TSN, p. 5, Sept. 26, 1994.

[17] G.R. Nos. 130599-600, April 21, 1999.

[18] People v. Entes, 103 SCRA 162 (1981).

[19] People v. Tabarangao, G.R. Nos. 116535-36, Feb. 25, 1999; People v. Prades, 293 SCRA 411 (1998).

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