

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LYNTON ASUNCION Y UANANG, ACCUSED-APPELLANT.

G.R. No. 123916. June 19, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Tuguegarao, Cagayan, Branch IV, in Criminal Case No. 0578, convicting accused-appellant of the crime of rape, and sentencing him to suffer the penalty of reclusion perpetua and to pay damages in the amount of P30,000.00.

On May 15, 1986, an information was filed against accused-appellant charging him of the crime of rape under paragraph 1, of Article 335 of the Revised Penal Code. Pertinent portion thereof reads -

That on or about April 3, 1985, in the municipality of Baggao, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Lynton Asuncion y Uanang, armed with a gun, with lewd design and by the use of force, violence and intimidation, did, then and there wilfully, unlawfully and feloniously have sexual intercourse with the offended party, Lelia G. Cipriano against her will.

Contrary to law.[2]

On July 7, 1986, accused-appellant was arraigned, and with the assistance of counsel de oficio, entered a plea of not guilty.[3]

The facts as testified to by private complainant, Lelia Cipriano (now Leila Cipriano-Maralli), are as follows:

At about 6:00 in the evening of April 3, 1985, private complainant was on her way home after getting the result of her National College Entrance Examination. She was walking with Robert Domingo along the provincial road of Tamblique, Baggao, Cagayan. Suddenly, a visibly inebriated accused-appellant appeared holding a gun. Without any warning, he pistol-whipped Robert Domingo, causing the latter to scamper away to avoid further harm. Accused-appellant forthwith dragged Leila toward the shoulder of the road, with his gun pointed at her head. He threatened to shoot Leila if she would shout. Thereafter, accused-appellant pushed Leila to the ground. He knelt and pulled down her pants. Her resistance proved futile as she was overpowered by accused-appellant who managed to pull her pants and underwear down to her ankle. After he undressed, accused-appellant placed himself on top of her and forcibly inserted his penis into her vagina. She felt pain in the process and wiggled her body to prevent penetration. After sometime, however, he succeeded in penetrating her vagina, and ultimately satisfied his lust.[4]

Left alone, Leila put on her clothes and proceeded home. On the way, she met her aunts and their barangay captain who were already looking for her. Leila wept and disclosed to them her harrowing experience. The following morning, Leila submitted herself to a medical examination at the Cagayan Provincial Hospital.[5]

Accused-appellant, on the other hand, declared that at about 6:00 p.m. of April 3, 1985, while he was in Barangay Tamblique, Baggao, Cagayan, and on his way toward the "centro", he saw, at a distance of 20 to 30 meters, Leila

walking with Robert Domingo. Upon meeting Robert Domingo, accused-appellant punched the latter, leading to a fist fight which lasted for about five minutes, until they were pacified by Edwin Ayson who was then building a fence on his yard, ten (10) meters away from them. As Edwin Ayson came closer, however, Robert Domingo ran away. [6]

Vehemently denying the charge against him, accused-appellant said that he does not know whether Leila likewise ran away in the course of their fight.[7] He theorized that the rape case was but a retaliatory move on the part of Leila who hated him because he hit her boyfriend, Robert Domingo.[8]

The testimony of accused-appellant was corroborated by defense witness Edwin Ayson, who testified on direct examination that on April 3, 1985, at about 5:30 p.m., while he was building a fence on his yard, he saw Leila and Robert Domingo coming from the north, opposite that of accused-appellant who was walking towards their direction from the south. When they met in front of his house, Robert Domingo and accused-appellant immediately exchanged blows. As he tried to pacify them, Leila ran away, followed by Robert Domingo.[9] On cross-examination, however, Edwin Ayson claimed that Leila was not the first one who ran away.[10] Edwin Ayson further said that he brought accused-appellant home after the incident.[11]

On January 23, 1995, the trial court rendered its decision in favor of the prosecution. The dispositive portion thereof reads:

WHEREFORE, the Court finds the accused GUILTY BEYOND REASONABLE DOUBT of the crime of rape committed upon the complaining witness Leila Cipriano (now Leila Cipriano-Maralli) and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to indemnify the complaining witness Leila Cipriano-Maralli in the amount of THIRTY THOUSAND (P30,000.00) PESOS as damages.

The accused is also sentenced to all accessory penalties imposed by law.

SO ORDERED.[12]

In his appeal to this Court, accused-appellant, through counsel, contends that:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING HEREIN ACCUSED-APPELLANT GUILTY OF THE CRIME OF RAPE DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BY PROOF BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT FAILED TO SCRUTINIZE WITH CARE AND CAUTION THE DETAILS OF TESTIMONY OF THE PRIVATE COMPLAINANT WHICH IS REplete WITH SERIOUS INCONSISTENCIES AND STATEMENTS NOT IN ACCORD WITH THE ORDINARY AND NATURAL EXPERIENCE OF MANKIND.

III

THE JUDGE WHO RENDERED THE DECISION FAILED TO EXERCISE UTMOST SCRUTINY IN REVIEWING THE TESTIMONIAL AND DOCUMENTARY EVIDENCE OF RECORD, ESPECIALLY SO THAT HE ONLY PRESIDED IN THE LATTER PART OF THE TRIAL OF THIS CASE.

IV

THE TRIAL COURT COMMITTED A VERY SERIOUS ERROR IN CONVICTING THE ACCUSED OF A CRIME OF RAPE.

V

THE TRIAL COURT ERRED IN NOT CONSIDERING THE MOTION FOR NEW TRIAL/RECONSIDERATION FILED BY THE ACCUSED.[13]

In his third assigned error, accused-appellant puts in issue the circumstance that the judge who penned the decision presided only at the later part of the trial, during the presentation of defense evidence, and was not able to hear the evidence for the prosecution. Citing the August 15, 1994 letter of Judge Orlando G. Beltran to the Court Administrator of the Supreme Court, informing the latter of his inability to render a decision in the instant case because the testimonies of three prosecution witnesses, namely: Dr. Ramon Shamon Abraham, Victoria Cipriano, and Bonifacia Cipriano, have not yet been transcribed, accused-appellant contends that despite incomplete records, the court rendered the decision on the basis solely of the uncorroborated testimony of private complainant.[14]

The accused-appellant's contention is without merit. The fact that the judge who wrote the decision had not heard the evidence in chief of both the prosecution and the defense will not taint his judgment.[15] After all, contrary to the allegation of accused-appellant, the trial court in fact undertook the retaking of the testimony of prosecution witness Bonifacia Cipriano as well as approved the stipulation of the parties as to the testimony of Dr. Abraham,[16] before it rendered the judgment of conviction on January 23, 1995. At any rate, even assuming that Leila's testimony was the sole basis of accused-appellant's conviction, still, the trial court's decision cannot be said to be irregular. In rape cases, the testimony of the rape victim alone, if credible, is sufficient to produce conviction. This is so because of the fact that usually only the participants can testify to its occurrence.[17]

The general rule that the trial court's findings as to the credibility of witnesses deserves respect from the appellate courts, cannot, however, be unqualifiedly applied in the present case. Not having heard all the testimonies himself, the judge is in no better position than the appellate courts to make such determination.[18] Hence, this Court conscientiously pored over and examined the records, especially the transcripts of stenographic notes. After a thorough review, we find no reason to disturb the factual findings of the trial court.

Indeed, Leila's categorical, straightforward, and spontaneous testimony, standing on its own, is more than sufficient to convict accused-appellant, thus:

Q

Where did he pull you?

A

Beside the road.

Q

How did he pull you, with what hand?

A

His left hand.

Q

When he pulled you towards the shoulder of the road what else did Lynton Asuncion do?

A

He pointed the gun to my head.

Q

What next did he do?

A

He threatened me, if I shout he would kill me.

Q

At that time did you believe him?

A

Yes, sir, I was afraid.

Q

Did you shout?

A

No, because I was afraid.

Q

After that what did Lynton Asuncion do to you?

A

He pushed me.

Q

What happened to you?

A

I fell down.

Q

Where did you fall?

A

On the ground.

Q

Where were you facing when you fell on the ground?

A

I fell flat on the ground. Facing upward.

Q

How did he push you?

He was holding a gun when he pushed you?

A

Yes sir.

Q

What happened next?

A

He forced me to remove my panties.

Q

Why, what were you wearing at that time?

A

Pants.

Q

How about your upper garment?

A

T-shirt.

Q

Did he succeed in removing your pants?

A

Yes, sir.

Q

When he removed your pants what did he do next?

A

He removed my panties.

Q

With what hand did he remove your panties?

A

With both hands, but he was holding the gun.

Q

Did you resist when he removed your panties?

A

I tried to resist but I was overpowered.

Q

You said you resisted, in what way?

A

While he was removing my panties I was also pulling it up, but he was stronger.

Q

What did he do next?

A

He removed his pants.

Q

What pants was he wearing at that time?

A

Maong.

Q

After that what next did he do?

A

He went on top of me.

Q

What happened to your panties when he tried to hold on to it and he was trying to remove it?

A

Because of his strength he was able to remove my panties.

Q

What happened to the panties?

A

It was removed.

Q

Where is that panties now?

A

No more.

COURT:

Q

What did Lynton Asuncion do when he was on top of you?

A

He inserted his penis into my vagina.

Q

At that time did you not shout?

A

I wanted to shout but I was very much afraid because his gun was pointed at me. He inserted his penis into my vagina.

Q

How did he insert his penis?

A

He forced inserting it (sic).

Q

What did you feel when he forced it in?

A

It was painful.

Q

What were you doing while he was in the process of inserting his penis.

A

Because I was afraid and because of fear I was rendered motionless.

Q

After he forcibly inserted his penis into your organ what did he do next?

A

He kept on pumping.

Q

How long did he do that motion?

A

About 20 minutes.

Q

At the time that he was doing that motion what did you feel?

A

It was painful.

Q

After that what did Lynton Asuncion do next?

A

He left me.

Q

Where did he proceed?

A

I don't know.

Q

How about you, what did you do?

A

I put my pants back and went home crying.[19]

What further bolstered Leila's credibility is the fact that she immediately related her horrible experience to her aunts and to their barangay captain right after the incident, and submitted herself the following morning to a physical examination at the Cagayan Provincial Hospital. A complainant's act of immediately reporting the commission of rape has been considered by the Court as a factor strengthening her credibility.[20]

The Court finds absurd the motive imputed by accused-appellant on the rape victim. It is difficult to believe that Leila would subject herself to the humiliation, disgrace, and trauma attendant to a prosecution for rape simply because she wanted to avenge her alleged boyfriend who was hit by accused-appellant. No woman would want to go through the process, the trouble and the humiliation of trial for such a debasing offense unless she actually has been a victim of abuse and her motive is but a response to the compelling need to seek and obtain justice.[21] Likewise, the Court finds no merit in the argument of accused-appellant that the testimony of Bonifacia Cipriano and Victoriana Cipriano, the victim's aunts, should have been disregarded, as they are allegedly partisan witnesses who have an axe to grind against him for having hurled stones in their store and house.[22] It is simply improbable that the victim's aunts would allow Leila to suffer the ordeal and embarrassment of public trial and expose her private parts to examination just because they want to get even with accused-appellant.

Accused-appellant also contends that it is unlikely for him to sexually abuse the victim along the side of the provincial road considering that it is a busy street. It should be recalled that rape can be committed in places where people congregate, in parks, along the roadside, within the school premises, inside the house where there are occupants and even in the same room where the members of the family are also sleeping.[23] Indeed, lust is no respecter of time or place.[24]

It must likewise be noted that the offense was committed in 1985, when motor vehicles plying in the province were still scarce. The possibility of detection by passers-by would be remote because by 6:00 o'clock in the evening, folks would already be in their houses, resting after strenuous work in the farm.

Accused-appellant next avers that he could not have molested the victim in the position described by her. With her pants and underwear around her ankle, he claims that penetration is impossible.[25] As correctly argued by the Solicitor General, sexual intercourse or penetration may be achieved even if the victim's pants and underwear were only hanging loose around the ankle. What the offender would merely do would be to put himself on top of the victim and separate her legs or knees just wide enough for him to reach her organ. Any determined rapist would facilely make penetration. Besides, full or deep penetration of the victim's vagina is not required; the mere touching by the male's organ or instrument of sex of the labia of the pudendum of the woman's private part is

sufficient to consummate rape.[26]

Accused-appellant makes capital of the absence of spermatozoa in the vagina of the victim as well as the absence of rupture in her hymen. The settled rule, however, is that to commit the crime of rape, the rupture of the hymen is not indispensable and full penetration of the penis is not necessary.[27] Then too, the absence of spermatozoa in the vagina or thereabouts does not negate the commission of rape.[28] In fact, a medical examination of the victim as well as a medical certificate, is merely corroborative in character and is not an indispensable element in rape. To reiterate, the testimony of the victim alone, if credible, as in the present case, is sufficient to convict the accused. [29]

The trial court did not err in disregarding accused-appellant's motion for new trial on the ground of newly discovered evidence,[30] considering that accused-appellant failed to satisfy all the requisites thereof. Accused-appellant failed to show that the testimonies of the persons he sought to present, specially that of Robert Domingo, were discovered only after trial and could not have been discovered and produced at the trial even with the exercise of reasonable diligence. Furthermore, the evidence sought to be presented by the defense is merely corroborative to its theory. As summed up by accused-appellant's counsel in the appellant's brief, the gist of Robert Domingo's alleged affidavit is that "the complaining witness ran ahead of Robert Domingo, while the latter and the accused were engaged in a fist fight." [31]

The information charged accused-appellant of rape committed with the use of force and intimidation under paragraph 1 of Article 335, and also with the use of a gun which is a "deadly weapon," within the purview of the same article. The Court affirms the finding of the lower court that accused-appellant is guilty beyond reasonable doubt of the crime of rape committed with the use of force or intimidation. Accused-appellant having been found to have likewise committed the crime with the use of deadly weapon, the penalty shall be reclusion perpetua to death.[32] As there was neither aggravating nor mitigating circumstance attendant in the perpetration thereof, the lesser penalty of reclusion perpetua should be imposed on accused-appellant. In any case, the abolition of the death penalty in 1987 retroactively affected and benefited accused-appellant.[33]

In line with prevailing jurisprudence, the P30,000 damages referred to in the dispositive portion of the decision under review is increased to P50,000.00 and is hereby awarded to private complainant by way of civil indemnity, which is mandatory upon the finding of the fact of rape.[34] An additional amount of P50,000.00 is further awarded to the victim as moral damages without need for pleading or proof of the basis thereof.[35]

WHEREFORE, the decision of the Regional Trial Court of Tuguegarao, Cagayan, Branch IV, in Criminal Case No. 0578, finding accused-appellant Lynton Asuncion y Uanang guilty of rape and sentencing him to suffer the penalty of reclusion perpetua, is AFFIRMED with the MODIFICATION that accused-appellant is ordered to pay the victim the amount of P50,000.00 as moral damages and another P50,000.00 as civil indemnity.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Judge Orlando D. Beltran.

[2] Rollo, p. 15.

[3] Record, p. 62.

[4] TSN, November 6, 1989, pp. 6-8; and December 13, 1989, p. 11; and December 14, 1989, pp. 4 and 8.

- [5] TSN, November 6, 1989, p. 8; April 15, 1991, pp. 3-6.
- [6] [TSN, June 30, 1994, pp. 2-3.]
- [7] Ibid., p. 3.
- [8] Ibid., p. 4
- [9] TSN, July 6, 1992, pp. 3-4.
- [10] Id., p. 10.
- [11] Id., p. 4.
- [12] Rollo, p. 45; penned by Judge Orlando D. Beltran.
- [13] Rollo, pp. 130-131.
- [14] Rollo, pp. 138-139.
- [15] *People v. Gementiza*, 285 SCRA 478, 489 [1998].
- [16] See Record, p. 393.
- [17] *People v. Ching*, 240 SCRA 267, 274 [1995]; citing *People v. Castillon, et al.*, 217 SCRA 76 [1993].
- [18] *People v. Gecomio*, 254 SCRA 82, 94 [1996]; citing *People v. Ablao*, 192 SCRA 698 [1990]; *People v. Gerapusco, et al.*, 143 SCRA 614 [1986]; and *People v. Rejano*, 237 SCRA 627 [1994].
- [19] TSN, November 6, 1989, pp. 6-8.
- [20] *People v. Perez*, 296 SCRA 17, 28 [1998]; citing *People v. Jaca*, 229 SCRA 332 [1994].
- [21] *People v. Lopez*, 302 SCRA 669, 678-679 [1999]; citing *People v. Gaban*, 262 SCRA 593 [1996].
- [22] Rollo, p. 135.
- [23] *People v. Roman*, 314 SCRA 425, 436 [1999]; citing *People v. Devilleres*, 269 SCRA 716 [1997].
- [24] *People v. Sandico*, 307 SCRA 204, 214 [1999]; citing *People v. Bugarin*, 273 SCRA 384 [1997].
- [25] Rollo, pp. 137-138.
- [26] *People v. Mahinay*, 302 SCRA 455, 479 [1999]; citing *People v. Ligotan*, 331 Phil. 98 [1996]; *People v. Lazaro*, 249 SCRA 234 [1995].
- [27] *People v. Almaden*, 305 SCRA 157, 165-166 [1999].
- [28] *People v. Montefalcon*, 305 SCRA 169, 177 [1999]; citing *People v. Yambao*, 193 SCRA 571 [1991] and *People v. Banayo*, 195 SCRA 543 [1991].
- [29] *People v. Brandares*, 311 SCRA 159, 165 [1991]; citing *People v. Teofilo Taneo*, 284 SCRA 251 [1998].
- [30] The requisites of said ground are: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) such evidence is material, not merely cumulative, corroborative, or impeaching, and is of such weight that, if admitted, would probably change the judgment (*People v. Aliviado*, 247 SCRA 300, 308-309 [1995]; citing *People v. dela Cruz*, 207 SCRA 632 [1992] and *MORAN, M., Comments on the Rules of Court*, Vol. 4 [1980], 340-341)

[31] Rollo, pp. 148.

[32] *People v. Bahuyan*, 238 SCRA 330, 348 [1994].

[33] *People v. Patalin, Jr.*, 311 SCRA 186, 210-211 [1999].

[34] *People v. Gementiza*, 285 SCRA 478, 492 [1998].

[35] *People v. Banela*, 301 SCRA 84, 94 [1999]; citing *People v. Prades*, 293 SCRA 411 [1998].

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