

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE BALORA Y DELANTAR, ACCUSED-APPELLANT.

G.R. No. 124976. May 31, 2000

Ponente: PARDO, J.

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PARDO, J.:

Before the Court is an appeal of accused Vicente Balora y Delantar from the decision[1] of the Regional Trial Court, Branch 158, Pasig City, finding him guilty beyond reasonable doubt of rape and sentencing him to reclusion perpetua, with its accessory penalties and to indemnify complainant Leticia Gapasinao in the amount of P50,000.00 and to pay the costs.

On April 26, 1994, Leticia G. Gapasinao filed a complaint[2] under oath with the Regional Trial Court, Pasig, Metro Manila charging accused Vicente Balora y Delantar with rape committed as follows:

"That on or about the 22nd day of April, 1994, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge with the undersigned, against her will and consent.

"Contrary to law."[3]

Upon arraignment on June 6, 1994, accused entered a plea of not guilty. Trial on the merits thereafter ensued.

At about 12:30 in the afternoon of April 22, 1994, Leticia G. Gapasinao and her friend Florencia Olea went to Manuela Complex Cinema C in Mandaluyong City to watch that day's first screening of the movie "Kadenang Bulaklak." While inside the cinema, Leticia felt the need to urinate so she went to the cinema's comfort room to relieve herself. She entered a cubicle and locked it.

Inside the cubicle, while Leticia was zipping up her pants, accused Vicente Balora y Delantar went over the five (5) feet and five (5) inches divider of the cubicle she was in, banged her head against the wall causing her to feel dizzy and then choked her using his hands. Accused forcibly undressed her and gagged her mouth with a handkerchief to prevent her from shouting for help. Accused further threatened her that he would kill her if she shouted for help.

Because accused was stronger in built than complainant and owing to the fact that she was in a state of shock, accused was able to fully undress her and forcibly laid her on the wet floor of the cubicle. The cubicle is two (2) meters in length and one and three-fourths (1¾) meters in width.[4] Accused went on top of her and inserted his penis into her vagina where he ejaculated.[5] Leticia felt pain (mahapdi) when accused inserted his penis into her vagina.[6]

After forty-five (45) minutes, Florencia Olea decided to follow Leticia to the comfort room. Though Florencia was calling her name, Leticia could not shout for help or get out of the cubicle because accused was preventing her from doing so. As nobody was answering, Florencia waited until she saw Leticia come out of one of the

cubicles, pale and trembling as if in a state of shock. She noticed that there were marks on Leticia's throat, a lump on her head and the areas around her eyes were black. The t-shirt she was wearing was wet. Leticia told Florencia that she had been raped and the rapist was still inside the cubicle.[7] At this time, a man suddenly came out of the cubicle, went out of the comfort room and ran away.

Florencia recognized the man as accused Vicente Balora y Delantar. He was about six (6) feet in height and regular in built. When he came out of the cubicle, he looked surprised and was zipping his pants.[8] Florencia called the guard and instructed him to run after the accused.

Cinema porter Norilyn Torres was on duty at the porter's table located at the foot of the stairs going to the balcony of Cinema C. Since very few people watch movies between 12:00 and 1:00 in the afternoon, she tried to leave her post. As she was about to leave she glanced at the direction of the cinema's ladies' comfort room. She saw two (2) ladies come out of the comfort room of Cinema C. She identified one of the ladies as Leticia Gapasinao and noticed that she was fixing her pants. What caught her attention was what the lady companion of the complainant said, "Miss, iyong kasama ko, iyong mama" pointing to the man descending the stairs.[9] To prevent the man from getting past her, Norilyn positioned herself in front of Cinema C. As there was no guard on duty in Cinema C, Norilyn sought the assistance of the other security guards.

Security guard Felipe Honrado was on duty at Cinema E when he heard Norilyn shouting "harangin, harangin," at the same time pointing to the man running downstairs towards the hallway. He positioned himself at the foot of the stairs going to the ground floor to prevent accused from getting away. Cornered, accused entered Cinema A.[10]

With the help of other security guards of the shopping complex, security guard Honrado pursued the accused and found him inside Cinema A's men's comfort room's cleaning area, with both hands on his ears, sweating and continuously saying "wala akong kasalanan, wala akong kasalanan." [11]

As soon as accused was brought out of the cinema, the crowd gathered outside mobbed him. When Leticia saw accused she said, "Iyan po. Iyan po." [12] She approached accused and slapped him. Still pale and trembling, Leticia told security guard Honrado "sinalbahe ako." Guard Honrado noticed that complainant's neck was all red. Thereafter, accused was turned over to Ernesto Manangha, the shopping complex's investigator.[13]

Meanwhile, Leticia and Florencia went to the criminal investigation division of the Mandaluyong police station. SPO3 Maria Luisa Dizon-Capili of the Mandaluyong Police Women's Desk Division referred Leticia for medical examination at the National Bureau of Investigation. SPO3 Capili told them to come back on April 26, 1994 so that their statements could be taken.

Before Leticia went to the NBI for medical examination, she had her swollen neck treated at the Mandaluyong Medical Center.

Dr. Hermogenes Hernandez, chief resident physician, EENT department, Mandaluyong Medical Center noticed that complainant suffered multiple hematoma, a bluish black discoloration of the skin, on her neck, which could have been caused by pressure applied on it. When he asked her what happened, she said that she was strangled. Judging from the kind of injuries she suffered, it would take about a week to heal and for the bluish-black color to disappear.[14]

On April 26, 1994, Leticia and Florencia went back to the Mandaluyong Police Station and filed a formal complaint.

On April 27, 1994, Leticia went to the NBI medico-legal clinic for physical examination. Dr. Maximo Reyes, NBI

medico legal officer confirmed the findings of Mandaluyong Medical Center that complainant sustained physical injuries "over the anterior aspect of the neck in the form of contused abrasion" which was about to heal.[15] The genital examination of the complainant yielded the following result:

"Pubic hair, fairly grown, moderate. Labia majora and labia minora, coaptated. Fourchette, tense. Vestibule, pinkish. Hymen, annular, tall, thick and intact. Hymenal orifice, admits a tube 2.0 cm. in diameter. Vaginal walls, tight. Rugosities, prominent."[16]

Dr. Reyes admitted that he could not categorically say whether there was complete penetration or not. Under normal circumstances, the average size of a male organ in full erection is 2.5 to 2.6 centimeters in diameter. If there is a complete penetration during the sexual act, a thick hymen may yield to 2.5 to 2.6 and may produce hymenal laceration. But there are cases where, despite complete penetration, the hymen would not give way, even if it were 2.0 to 2.8 in diameter. In other words, there are hymen that may admit complete penetration without necessarily producing laceration and there are hymen that may admit with injuries and result to laceration.[17]

Accused Vicente Balora y Delantar denied raping Leticia. He admitted, though, that on April 24, 1994 he went to Manuela Complex to watch a movie. At about 12:00 noon of that day, he went to the comfort room to urinate. As he was very drunk at that time, he could not remember which comfort room he entered, whether it was the ladies' or men's comfort room. He remembered that he bumped into a lady, whom he identified as complainant Leticia Gapasinao, inside the comfort room and he heard her shout that there was a rapist inside. When he got out of the comfort room, the janitor of the movie house mauled him, until he was turned over to the responding police officers. He was taken to the criminal investigation division of the Mandaluyong police station.[18]

Accused Vicente Balora presented in evidence pictures[19] of the cubicles inside the cinema's comfort room, which measured forty seven (47) inches in length and thirty four and one half (34½) inches in width. There is an opening at the base and at the top of each cubicle. Inside each cubicle, there is a toilet bowl and each door has a lock. However, these were pictures, not of the comfort room where Leticia was raped, but of a different comfort room inside the shopping complex.[20]

On November 8, 1995, the trial court rendered a decision finding accused guilty of rape and sentencing him to reclusion perpetua, together with its accessory penalties, the dispositive portion of which provides:

"WHEREFORE, in view of the foregoing, accused Vicente Balora y Delantar is found guilty beyond reasonable doubt of the crime of rape and is sentenced to suffer in prison the penalty of reclusion perpetua together with its accessory penalties. He is also ordered to indemnify private complainant Leticia Gapasinao in the amount of P50,000.00 and to pay the costs.

"SO ORDERED.

"Pasig City; 8 November 1995.

"(SGD.) JOSE R. HERNANDEZ

"J u d g e"[21]

On November 28, 1995, accused Vicente Balora y Delantar filed a notice of appeal.[22]

On appeal, accused-appellant alleges that the trial court erred in giving credence to the testimony of Leticia Gapasinao. He cites the physical impossibility of committing the crime imputed to him inside a public comfort room, measuring only two (2) meters in length and (1¾) meters in width, for which reason he should be acquitted.

On the other hand, the Solicitor General submits that the prosecution has proved the guilt of the accused of rape beyond reasonable doubt and prays for affirmance of the trial court's decision in toto.

Accused-appellant puts in doubt the credibility of complainant's testimony. He said that he could not have forced complainant to lie down on her back on the wet floor of the cubicle of the cinema's comfort room, and eventually consummate the rape, considering that there is a toilet bowl in the middle and the cubicle measured only two (2) meters in length and (1 $\frac{3}{4}$) meters in width.

There is no merit in this contention. The court has time and again held that "the evil in man has no conscience. The beast in him bears no respect for time and place, driving him to commit rape anywhere--even in places where people congregate such as in parks, along the roadside, within school premises, and inside a house where there are other occupants." [23] "Rape does not necessarily have to be committed in an isolated place and can in fact be committed in places which to many would appear to be unlikely and high-risk venues for sexual advances." [24] Indeed, no one would think that rape could happen in a public place like the comfort room of a movie house and in broad daylight.

We find no reason to depart from the findings of the trial court sustaining the credibility of Leticia whose demeanor when she testified was carefully observed by the trial court and found to be sincere, honest and worthy of belief. [25] Assessing the credibility of the witnesses is a function that is best discharged by trial courts. [26] Leticia underwent rigorous examination, both direct and cross, and her testimony never faltered or changed. She was candid, straightforward and consistent in narrating how she was raped. There is nothing that would reveal that Leticia had a motive other than to bring her rapist to justice and vindicate her honor. Against her positive testimony that accused was the rapist, the latter had nothing to offer but denial. "Settled is the rule that positive testimony is stronger than negative testimony." [27]

Accused tried to establish that no rape was committed due to the apparent absence of resistance on the part of complainant. It was established that throughout the sexual assault against her, complainant never shouted for help nor created any noise, as if willingly submitting to the whim of the accused. Accused did not use a weapon of any kind, merely verbal threats of death, upon the complainant. Hence, accused claims that there could be no rape as the sexual intercourse was consensual and voluntary on her part.

The contention is untenable. "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 advances because of fear for her life and personal safety. It is sufficient that the intimidation produces fear in the mind of the victim that if she did not submit to the bestial demands of the accused, something far worse would befall her at the time she was being molested." [28]

Note that accused is about six (6) feet tall, and regular in built, while complainant is a small woman, around five (5) feet in height. Considering the great discrepancy between the built of accused and complainant, the latter can not be faulted for not offering any form of resistance. Inside that small cubicle of the cinema's comfort room, accused surreptitiously entered the locked cubicle and banged complainant's head against the cement wall making her dizzy, coupled with the threat of death if she would fight back. Any amount of resistance would be futile. Not only was she in a state of shock, she was intimidated, that offering no resistance at all does not mean consent to the assault so as to make her submission to the sexual act voluntary. [29] Leticia's testimony revealed that she was cowered into silence and into submitting to the bestial desire of accused because of fear of a greater harm to her life. [30]

In *People vs. Luzorata*, [31] the Court held that intimidation was addressed to the mind of the victim and therefore subjective, and its presence could not be tested by any hard-and-fast rule but must be viewed in light of the victim's perception and judgment at the time of the crime. Thus, when a rape victim becomes paralyzed with fear, she cannot be expected to think and act coherently, her failure to immediately take advantage of the early

opportunity to escape does not automatically vitiate the credibility of her account. [32] "Complainant cannot be faulted for not taking any action inasmuch as different people react differently to a given type of situation, there being no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience." [33]

Accused puts in issue the absence of hymenal lacerations and spermatozoa as shown by the medical examination conducted by the medico-legal officer of the NBI. He claims that if indeed there was complete penetration of the sexual organ of the complainant and, as claimed by her, he ejaculated, medical findings proved otherwise.

Again, the contention is unmeritorious. "Lack of lacerated wounds does not negate sexual intercourse. A freshly broken hymen is not an essential element of rape." [34] Even the fact that the medical report states that the hymen of the victim was still intact does not negate rape. [35] As explained by Dr. Maximo Reyes, medico-legal officer of the NBI, "there are hymen that may admit without necessarily producing laceration and there are hymen that may admit with injuries that will produce such laceration." [36]

As to the contention that no spermatozoa was found in the vaginal canal of complainant despite her claim that accused ejaculated, the presence or absence of spermatozoa is immaterial in the prosecution of a rape case. It is well settled that penetration of the woman's vagina, however slight, and not ejaculation, constitutes rape. [37] The Court rejects the argument that the absence of sperm in the vaginal area is a good defense in a rape case. [38]

Hence, the prosecution conclusively established accused-appellant's guilt beyond reasonable doubt.

With regard to the imposition of the amount of P50,000.00 as civil indemnity, this is consistent with prevailing jurisprudence. However, we modify the trial court's ruling by adding P50,000.00 as moral damages in line with current jurisprudence. [39] Even without proof in the pleadings to support an award of moral damages, the Court has declared that in crimes of rape, in addition to civil indemnity, moral damages may be awarded to the victim. It is quite apparent that the victim had to endure much anguish and pain that it would be expecting too much for her to recite in detail her traumatic experience merely to obtain pecuniary restitution. [40]

WHEREFORE, the Court AFFIRMS the appealed decision of the Regional Trial Court, Pasig City, Branch 158, in Criminal Case No. 106250 finding accused Vicente Balora y Delantar guilty beyond reasonable doubt of rape, defined and penalized under Article 335 of the Revised Penal Code, as amended, committed against Leticia Gapasinao and sentencing him to reclusion perpetua, with the MODIFICATION that he shall pay the victim, Leticia Gapasinao, the amount of fifty thousand (P50,000.00) pesos as moral damages in addition to fifty thousand (P50,000.00) pesos as civil indemnity.

With costs.

SO ORDERED.

Puno, and Kapunan, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

Ynares-Santiago, J., no part.

[1] In Criminal Case No. 106250, decision dated November 8, 1995 and penned by Judge Jose R. Hernandez; Rollo, pp. 19-24.

[2] Trial Court Record, pp. 1-2.

[3] Rollo, pp. 5-6.

- [4] TSN, July 5, 1994, p. 3.
- [5] TSN, July 4, 1994, p. 9.
- [6] Ibid., pp. 4-8.
- [7] TSN, July 12, 1994, pp. 4-5.
- [8] Ibid., pp. 5-6.
- [9] TSN, July 18, 1994, pp. 3-5.
- [10] TSN, August 16, 1994, p. 4.
- [11] Ibid., p. 5.
- [12] Ibid.
- [13] Ibid., p. 16.
- [14] TSN, November 8, 1994, pp. 4-5.
- [15] TSN, December 14, 1994, p. 4.
- [16] Exh. "H", Folder of Prosecution and Defense Exhibits, p. 107.
- [17] TSN, December 14, 1994, p. 5.
- [18] TSN, February 17, 1995, pp. 3-4.
- [19] Exhibits "1-3," Prosecution and Defense Exhibits, p. 108.
- [20] TSN, March 21, 1995, p. 8.
- [21] Rollo, p. 24.
- [22] Ibid., p. 25.
- [23] *People vs. Agbayani*, 284 SCRA 315, 340 (1998)
- [24] *People vs. Wilson Mitra*, G. R. No. 130669, March 27, 2000; *People vs. Hayag*, G. R. No. 127356, June 29, 1999.
- [25] *People vs. Joey Amigable*, G. R. No. 133857, March 31, 2000.
- [26] *People vs. Shareff Ali El Akhtar*, G. R. No. 130640, G. R. No. 130640, June 21, 1999.
- [27] *People vs. Tolentino*, G. R. No. 1330514, June 17, 1999.
- [28] *People vs. Mitra*, supra, Note 24.
- [29] *People vs. Wilson Mitra*, supra, Note 24.
- [30] TSN, July 5, 1994, p. 7.
- [31] 286 SCRA 487 (1998)
- [32] *People vs. Rizalino P. Rebose*, G. R. No. 131104, June 17, 1999.
- [33] *People vs. Mariano Palma y Andrade*, G. R. Nos. 130206-08, June 17, 1999.
- [34] *People vs. Joey Amigable*, supra, Note 25.
- [35] *People vs. Cabebe*, 290 SCRA 543, 557 (1998)
- [36] TSN, December 14, 1994, p. 5.
- [37] *People vs. Dela Paz*, 299 SCRA 86, 97 (1998)
- [38] *People vs. Borce*, 289 SCRA 445 (1998)
- [39] *People vs. Joey Amigable*, supra, Note 25; *People vs. Apostol*, G. R. Nos. 123267-68, December 9, 1999.
- [40] *People vs. Wilson Mitra*, supra, Note 24.

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