

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEMESTOCLES LOZANO @ TOMMY, ACCUSED-APPELLANT.

G.R. No. 125080. September 25, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Alibi and denial cannot prevail over the clear and positive identification of the appellant as the perpetrator of the crime and the victim's detailed narration of the events on that fateful day. Aside from civil indemnity, a rape victim may be awarded moral and exemplary damages. The appreciation of ignominy as a generic aggravating circumstance, absent any mitigating ones to offset it, entitles the victim to exemplary damages.

The Case

Temestocles Lozano seeks the reversal of the February 29, 1996 Decision[1] of the Regional Trial Court of Maasin, Southern Leyte, Branch 25, in Criminal Case No. 1471, convicting him of rape, sentencing him to reclusion perpetua and ordering him to pay civil indemnity of P50,000.

Provincial Prosecutor Iñego A. Gorduiz charged appellant with rape in an Information dated October 24, 1990, which reads as follows:

"The undersigned, acting upon a sworn complaint originally signed and filed by the offended party, Lilia L. Montederamos, hereby accuses TEMESTOCLES LOZANO, alias Tommy, a resident of Ibarra, Maasin, Southern Leyte and is presently detained at the Provincial Jail, Maasin, Southern Leyte of the crime of RAPE, committed by him as follows:

"That sometime in the afternoon of August 29, 1990, in [B]arangay Ibarra, [M]unicipality of Maasin, [P]rovince of Southern Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lustful intent and lewd design and by means of force, threats, intimidation and/or violence did then and there willfully, unlawfully and feloniously sexually attack, assault and ravish the offended party, Lilia L. Montederamos, and had carnal intercourse without her consent and against her will, to her damage and [to the prejudice of the] social order." [2]

Upon his arraignment on March 13, 1991, appellant, assisted by Counsel de Parte Porfirio P. Siayngco, pleaded not guilty.[3] Trial on the merits ensued in due course. On February 29, 1996, the trial court rendered its Decision,[4] the dispositive portion of which reads:

"WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATION, the Court hereby renders judgment finding the accused Temestocles Lozano, guilty beyond reasonable doubt of the crime of Rape as defined and punished by Art. 335 of the Revised Penal Code, as amended, and is accordingly sentenced:

1. To suffer the penalty of reclusion perpetua;
2. To indemnify the offended party [in] the amount of Fifty Thousand Pesos (P50,000.00) without subsidiary imprisonment in case of insolvency; and

3. To pay the costs.

"The preventive imprisonment undergone by the accused Temestocles Lozano shall be fully credited [to] the service of his sentence if he voluntarily agrees in writing to abide by the same disciplinary rules and regulations imposed upon convicted prisoners, otherwise, he shall be credited with only four-fifths (4/5) of the time during which he underwent preventive imprisonment." [5]

The Facts

Evidence for the Prosecution

In the Appellee's Brief, [6] the solicitor general [7] presents the following narration of the facts:

"On August 29, 1990 at about 4:30 o'clock in the afternoon, private complainant, Lilia Montederamos, a resident of Barangay Sta. Rosa, Maasin, Southern Leyte, was requested by her mother, Catalina Montederamos to buy rice at the neighboring barangay of Ibarra (pp. 3-4, TSN, July 23, 1991).

"On her way to Ibarra, Lilia passed by the coconut plantation of Luding Bandibas where she saw appellant Temestocles Lozano (p.5, TSN, Ibid.).

"When Lilia resumed walking to her destination, Lilia noticed that appellant was following her. As she was alone, Lilia got frightened and started to run. Eventually, however, appellant caught up with Lilia (p. 6, TSN, Ibid.).

"Once astride each other, appellant suddenly covered Lilia's mouth, poked a sharp-pointed stick on her side and warned her not to make any noise or else she [would] die (p. 7, TSN, Ibid.).

"Lilia pleaded to appellant not to do anything to her because she was pregnant but the plea fell on deaf ears. Instead, appellant forcibly brought her to a banana plantation at the lower portion of the road (p. 11, TSN, Ibid.).

"When Lilia tried to shout, appellant boxed her thrice on her right cheek causing her to feel dizzy (p. 5, TSN, September 18, 1991).

"After delivering the fist blows, appellant ordered Lilia to take off her clothes and threatened her with death if she refused. When Lilia finished undressing, appellant took off his clothes but his pants and brief[s] were only pulled down xxx to his knees (pp. 12-13, TSN, May 23, 1991). He then ordered Lilia to [lie] down on the stony ground (p. 16, TSN, October 23, 1991) after which, he lay on top of Lilia and inserted his penis into her vagina (p. 15, TSN, Ibid.).

"Thereafter, appellant pulled out his penis from the vagina of Lilia, wound it up with banana fiber and inserted it again [in] to Lilia's vagina. Then, he pulled out again his penis and forced Lilia to suck it (pp. 20-21, TSN, October 23, 1991).

"After he was through, appellant brought Lilia with him. As they proceeded to the Bodega of Montalbo, Lilia saw persons coming towards their direction. Lilia seized this as an opportunity for escape especially so that the left arm of appellant was no longer holding her neck. She then pushed appellant and ran to the persons coming towards their way. She recognized these persons as Aniceto Malasaga, Diony Malasaga and Juanito Bandibas (p. 18, TSN, July 23, 1991).

"Lilia ran directly to Diony Malasaga and told his group that somebody wanted to kill her. The three (3) brought Lilia home and upon arrival thereat, she informed her parents that appellant raped her. On the same night, Lilia's father reported the incident to the Maasin Police Station (pp. 4-6, TSN, February 19, 1992).

"On the following day, August 30, 1990, Lilia went to [the] Maasin Police Station to report the incident[; there] she executed a sworn statement (pp. 3-6, Record).

"Lilia subjected herself to physical examination at the Integrated Provincial Health Office, Maasin, Southern Leyte. Dr. Evelyn Cabal conducted the physical examination and issued a medical certification with the following findings:

Face - swelling and hematoma at R cheek bone
- tenderness with abrasion at the back R lumbar region

Pelvic exam:

- Ext. genitalia grossly normal
- introitus - nulliparous

SE: Cervix is bluish closed with scanty, whitish, mucoid vaginal discharges

IE: cervix is closed, soft

BME: uterus is enlarged compatible to 5 months AOG

For sperm determination - positive (Exh. A)

(p. 8, Record)

"Prosecution witness Aniceto Malasaga testified that while he was walking on his way home, together with Juanito Bandibas and his wife, he saw Lilia running towards his direction, crying (p. 4, TSN, February 19, 1992). When he asked what happened to her, Lilia kept on crying and asked him to bring her home (p. 5, Ibid.).

"Thereafter, Aniceto brought Lilia to her house. Upon arrival thereat, Lilia was still crying. When asked by her parents what happened to her, Lilia reported that appellant raped her (pp. 6-7, Ibid.)."

Evidence for the Defense

In his nine-page Brief,[8] appellant alleges alibi and presents this version of the facts:

"Accused TEMESTOCLES LOZANO testified that on August 29, 1990 at about 4:00 o'clock in the afternoon, he was drinking Tanduary 65 with his friend Alfred Yap at the store of Purok Kalamanggam, Ibarra, Maasin, Southern Leyte. Pacita Biton joined them and they conversed on various topics - benefit dance, basketball. At about 6:00 o'clock in the evening, Pacita Biton, went home to Bugnay while he and his companion proceeded to his home in Purok Seaside. Together with his parents and sister Malony, they ate their supper. At 7:00 P.M., he conducted Alfredo Yap on the road and he went home to sleep.

"He testified that Lilia Montederamos was introduced to him during a benefit dance at Sta. Rosa. He courted her, she accepted his proposal and they were sweethearts.

"During the time, they had a relationship, he and Lilia met clandestinely, usually about 7:00 P.M. at Purok Estrella in Ibarra and they would proceed to the premises of Ibarra Elementary School where they would talk and kiss each other as lovers would normally do.

"On August 14, 1990, about 4:00 P.M., he met the victim at the park center of Estrella. The victim was breaking their relationship as she was to be married. He did not accede to said request. On August 27, 1990, he met the victim again. The latter told him that she was pregnant, her fiancé was the father of her unborn child. (TSN. November 5, 1992, pp. 12-15.)"

The Ruling of the Trial Court

In ruling for the prosecution, the trial court gave credence to the victim's testimony, which we quote:

"The evidence of the prosecution clearly show[s] that accused Temestocles Lozano succeeded in having carnal

knowledge with victim Lilia Montederamos by using force and intimidation. While its evidence rest[s] mainly on the testimony of victim Lilia Montederamos, yet her testimony bear[s] much weight and is conclusive and probable.

"Testifying in court, victim went through the agonizing experience of relating the incident of how [the] accused in the afternoon of August 29, 1990 waylaid her and succeeded in ravishing her, using force and intimidation. [De]spite the embarrassment and humiliation she must have felt at the time she was giving her testimony, [the] victim vividly recalled and narrated the savage acts that the accused did to her.

x x x

"The testimony of the victim leaves Lilia Montederamos no room for doubt as to the identity of the perpetrator of the dastardly act. She positively identified accused Temestocles Lozano as the one who sexually abused her."[9]

Hence, this appeal.[10]

Assignment of Error

In assailing the trial court's Decision, appellant interposes this assignment of error:

"The trial court erred in not acquitting the accused for the crime of rape despite failure of the prosecution to prove his guilt beyond reasonable doubt."

The resolution of the present appeal revolves around the sufficiency of the prosecution evidence and the credibility of witnesses.

The Court's Ruling

The appeal is devoid of merit.

Sufficiency of the Prosecution Evidence

Appellant argues that the "prosecution failed to categorically and morally ascertain that the elements of rape were in attendance in the case at bar." [11] Lozada claims that the victim and he knew each other very well; he even alleges that they were sweethearts. He maintains that the victim willingly and voluntarily submitted to the sexual act, and that he helped her remove her clothes. Allegedly, he even placed his jacket on the stony ground where she lay, in order to cushion her back.

These arguments do not persuade. Beyond any reasonable doubt, the prosecution established appellant's guilt.

No Proof That They

Were Sweethearts

Appellant's contention that he and the victim were sweethearts must fail. Lilia Montederamos specifically denied the existence of such a relationship, and appellant utterly failed to substantiate his bare allegation. No one took the witness stand to confirm independently that the victim and the appellant were sweethearts. Nobody testified ever seeing the two together. Furthermore, no love notes, photographs or mementos of their alleged love affair were offered. In view of the foregoing, appellant's insistence that he and the victim were lovers must be swept aside for being both dubious and unsubstantiated.

Even granting arguendo that the two were sweethearts, appellant cannot evade criminal liability. A man does not have an unbridled license to subject his beloved to his carnal desires. By asserting the existence of such a relationship, appellant seeks to prove that the victim willingly participated in the sexual act. But she did not. The evidence in this case clearly shows that appellant employed force and intimidation.

In her testimony, Lilia Montederamos clearly described how appellant chased her, covered her mouth, poked a

sharpened stick at her side and threatened to kill her if she were to make any noise. The victim was obviously cowed and, for this reason, the appellant was able to lead her to the nearby banana plantation. She testified:

"Q:

When you noticed that accused was following you, what did you do?

A:

I ran fast.

Q:

You ran fast? Why did you run fast?

A:

I was afraid.

Q:

Why were you afraid of him?

A:

Because he was running and following me.

x x x x x x x x

Q:

Was the accused able to overtake you?

A:

I was overtaken.

x x x x x x x x

Prosecutor Gorduiz:

x x x [W]hat happened next?

A:

His left hand he used to cover my mouth and his right hand was holding a stick [which he] poked [at] my side.

x x x x x x x x

Prosecutor Gorduiz:

Can you say what the accused said to you while poking at your right side?

A:

He said that: 'Don't make any noise so that you will not die.'

x x x x x x x x

Prosecutor Gorduiz:

After hearing those threatening words, what did you feel?

A:

I was afraid.

x x x x x x x x

Q:

Then what did he do next[?]

A:

He brought me towards the lower portion of the road.

Q:

While bringing you to the lower portion, where was his left hand?

A:

His left hand was holding [sic] around my neck.

x x x x x x x x

Q:

And while the accused placed his left hand on your neck, he forced you to go down?

A:

He brought me to the lower portion of the road at the banana plantation."[12]

There, appellant ordered the victim to take off her clothes:

"Q:

Then when you reached the banana plantation, what did he do to you?

A:

He let me undress.

x x x x x x x x

Q:

You said he let you undress, did you obey what he told you to do?

A:

I took off my clothes because he said, 'If I would not do so, he [would] kill me'."[13]

Thereafter, appellant succeeded in sexually assaulting the victim in the following manner:

"Prosecutor Gorduiz:

Immediately after you were made to lie down, where did the accused place himself?

A:

He lay on top of me.

x x x x x x x x

Q:

Then after those acts, what did he do?

A:

After that he inserted his penis into my vagina.

x x x x x x x x

Prosecutor Gorduiz:

Was the accused able to finish the act of sexual intercourse?

A:

He finished.

Q:

After he finished his intercourse with you, what did he do?

A:

He let me suck his penis.

x x x x x x x x

Prosecutor Gorduiz:

You said that accused got a banana stalk and wound [it] around his penis[;] when was this act of the accused [--] before or after the first intercourse?

A:

After he finished his first act of sexual intercourse, it was then [and] there that he stripped [a] banana stalk and tied his penis and he again inserted [it] into my vagina." [14]

Appellant's contention that the complainant failed to resist or to shout is erroneous. From the above testimony, it is clear that the victim feared for her life, as appellant not only verbally threatened to kill her, but held her neck and poked a sharp stick at her side. Likewise, appellant's claim that the victim undressed herself voluntarily is negated by her testimony that appellant threatened to kill her if she did not take off her clothes. She further testified that while appellant was bringing her downhill, she tried to shout but appellant punched her three times.[15] Indeed, she was terrorized into submission.

We must emphasize that "forcibly does not mean violently, but with that description of force which must be exercised in order to accomplish the act." [16] In the present case, the force exerted by appellant was sufficient to attain his purpose.

Victim's Testimony

Credible and Convincing

In fine, Lilia Montederos clearly described how appellant pursued her, covered her mouth, poked a sharpened stick at her side, threatened to kill her, forcibly brought her to the nearby banana plantation, punched her and

finally ravished her. The trial court, which had the opportunity to observe the manner and demeanor of the victim in the witness stand, was convinced of her credibility. Appellant, however, asks the Court not to believe the victim's testimony.

We find no reason to reverse or alter the holding of the trial court. "It is a time-tested doctrine that a trial court's assessment of the credibility of a witness is entitled to great weight -- even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence." [17]

The victim's credibility is further bolstered by her subsequent acts. As observed by the trial court, "the act of [the] victim in filing the complaint against the accused is an indication of her desire to seek xxx justice." [18] Furthermore, that she immediately reported the matter to the authorities and submitted herself to physical examination on the same day is another indication of the truth of her accusation.

Physical Evidence Supports the Victim's Allegations

Moreover, the medical report of Dr. Evelyn Cabal corroborates the victim's testimony that appellant used physical force against her. In her report and testimony, Dr. Cabal observed swelling and hematoma at the right cheekbone of the victim and abrasion at the back of her lumbar region. The doctor also testified that the swelling and hematoma at the right cheekbone were indicative of a strong punch. Finally, she noted that the tenderness and abrasions at the lumbar region could have been due to a stone that had hit the back of the victim, thereby corroborating the latter's testimony that she had been forced to lie down on a stony ground.

Alibi

Appellant's defense of alibi is unpersuasive. It is well-settled that alibi cannot overcome the positive identification of the appellant as the perpetrator of the crime or the victim's detailed narration of the events that transpired on that fateful day. Indeed, alibi is one of the weakest defenses because it is easy to fabricate and difficult to refute. In the present case, the victim positively pointed to the appellant as the malefactor. As stated earlier, we find no reason to reject the trial court's assessment of her credibility. In the same vein, we find no basis to discard her testimony and accept appellant's alibi.

Appellant Liable for One Count of Rape Only

Although the prosecution's evidence tended to prove that appellant had carnal knowledge of the victim at least twice, he cannot be held liable for two counts of rape, because the Information charged him with only one count.

This Court has ruled that "an accused cannot be convicted of an offense, unless it is clearly charged in the complaint or information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be a violation of this constitutional right." [19]

In *People v. De Guzman*, [20] appellant was convicted of only one count of rape because the Information charged him with only one, despite the fact that evidence presented during the trial showed that there were at least two acts of attempted rape and one consummated rape:

"What is clear to us is that there were, at least, two acts of attempted rape and one consummated rape, committed in light of the testimony of x x x. The information, however, charged the accused with only one act of rape; hence, consistent with the constitutional right of the accused to be informed of the nature and cause of the accusation against him, he cannot be held liable for more than what he was charged [with]. There can only be one conviction of rape if the information only charges one offense, even if the evidence shows three

separate acts of sexual intercourse." [21]

Damages

The trial court ordered the appellant to pay the victim an indemnity of P50,000. In view of the peculiar facts of this case, the solicitor general prays that the amount be increased to P150,000. [22]

There is some merit to the solicitor general's submission. It is a sad commentary on our times that rape has become so commonplace. But even by the modern standards of morality, the acts of appellant were particularly bestial. The victim was pregnant, and she pleaded with the appellant on this ground. However, her plea went unheeded and appellant went on to force his lust on her. But appellant was not yet through. He then tied a banana fiber around his penis and inserted it

Again into her vagina. Thereafter, he pulled out his organ and forced the victim to suck it.

Clearly, the Court will not be doing enough if it merely affirmed the ruling of the trial court. Accordingly, in addition to the award of indemnity in the amount of P50,000, the Court orders the appellant to pay moral damages in the amount of P50,000 plus exemplary damages of P25,000.

Under the Civil Code, moral damages include "physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury." [23] In *People v. Prades*, [24] the Court ruled that "moral damages may additionally be awarded to the victim in the criminal proceeding, in such amount as the Court deems just, without the need for pleading or proof of the basis thereof as has heretofore been the practice." In any event, the physical suffering that the victim went through because Appellant Lozano tied a banana fiber around his penis is obvious. But more than that, the mental anguish and moral shock will remain etched in her psyche for a long time.

Her description of her ravishment is proof enough of her moral sufferings.

Exemplary damages should also be awarded because the crime was committed with the aggravating circumstance of ignominy. [25] This aggravating circumstance is evident from the acts of the appellant, which made the effects of the crime more humiliating and subjected the offended party to degradation and ridicule. This Court will not stand idle while scoundrels wage war against civilized society.

WHEREFORE, the assailed Decision is hereby AFFIRMED, with the MODIFICATION that appellant is ordered to pay moral damages of P50,000 and exemplary damages of P25,000, in addition to the civil indemnity of P50,000, or a total of P125,000. Costs against appellant.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug and Quisumbing, JJ. concur.

[1] Penned by Judge Numeriano R. Avila, Jr.; rollo, pp. 23-30.

[2] Information, p. 1; rollo, p. 7.

[3] Records, p. 35.

[4] Rollo, pp. 23-30.

[5] Assailed Decision, p. 8; rollo, p. 30; records, p. 316.

[6] Appellee's Brief, pp. 2-7; rollo, pp. 88-93.

[7] The Appellee's Brief was signed by Assistant Solicitor General Carlos N. Ortega, Assistant Solicitor General Amparo M. Cabotaje-Tang and Associate Solicitor Noel P. Palma.

[8] Appellant's Brief, pp. 4-5; rollo, pp. 56-57. This was signed by Public Attorney II Liwayway J. Nazal De los Santos.

[9] Assailed Decision, pp. 5-8; rollo, pp. 27-30.

[10] Although appellant's counsel (Porfirio Siayngco) erroneously addressed the notice of appeal to the Court of Appeals (records, p. 68), the RTC correctly forwarded the case records to this Court. The case was deemed submitted for resolution on June 10, 1998, upon receipt by this Court of the Appellee's Brief. The filing of a reply brief was deemed waived, as none was filed within the reglementary period.

[11] Appellant's Brief, p. 8; rollo, p. 60.

[12] TSN, July 23, 1991, pp. 5-11.

[13] Ibid., p. 11.

[14] TSN, July 23, 1991, pp. 14-16.

[15] TSN, September 18, 1991, p. 5.

[16] People v. Rosare, 264 SCRA 398, 416-417, November 19, 1996, per Regalado, J.

[17] People v. Angeles, 275 SCRA 19, 28-29, July 1, 1997, per Panganiban, J.

[18] Decision, p. 7; rollo, p. 29.

[19] People v. Ortega, GR No. 116736, 22, July 25, 1997, per Panganiban, J.

[20] People v. De Guzman, 265 SCRA 228, December 2, 1996, per Davide, Jr., J.

[21] Ibid., p. 244.

[22] Appellee's Brief, p. 17; rollo, p. 103.

[23] Article 2217, Civil Code.

[24] GR No. 127569, July 30, 1998, p. 19, per curiam.

[25] Article 14 (17), Revised Penal Code.

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