

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO MARABILLAS Y CAÑEDA, ACCUSED-APPELLANT.

G.R. No. 127494. February 18, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an appeal taken by the accused Mario Marabillas y Cañeda from a decision[1] of the Regional Trial Court (RTC) Branch 34, Balaoan, La Union, convicting him of rape and sentencing him to reclusion perpetua and the accessory penalties provided for by law; and to indemnify the complainant, a grade six pupil, who stopped schooling because of the incident, the amount of P50,000.00 as moral damages, without subsidiary imprisonment in case of insolvency.

On March 17, 1992, an Assistant Provincial Prosecutor of La Union, upon complaint under oath of Lourdes L. Arroyo, filed with the Regional Trial Court, Branch 34, Balaoan, La Union, an information charging Mario Marabillas y Cañeda with rape, committed as follows:

"That on or about the 12[th] day of January, 1992 in the Municipality of Bangar, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously have sexual intercourse with Lourdes L. Arroyo, a virgin over 12 but under 18 years of age, against her will by inserting his penis into said victim's vagina, thereby causing great pain to her, to the damage and prejudice of herein offended party.

CONTRARY TO LAW."[2]

Upon arraignment[3], the accused, assisted by counsel, pleaded not guilty to the crime charged.

After due trial, on April 13, 1994, the trial court rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, the Court hereby renders judgment declaring the accused MARIO MARABILLAS y CAÑEDA guilty beyond reasonable doubt of the crime of RAPE as defined and penalized in Article 335 of the Revised Penal Code and thereby sentences him to suffer the penalty of Reclusion Perpetua and the accessory penalties provided for by law; and to indemnify the complainant, a grade six pupil, who stopped schooling because of the incident, the amount of P50,000.00 as moral damages, without subsidiary imprisonment in case of insolvency.

"The preventive imprisonment suffered by the accused by reason of this case is counted in his favor.

IT IS ORDERED."[4]

Hence, this appeal.

In his brief, the accused raises questions on the credibility of prosecution witnesses and the absence of force or

intimidation in having sexual intercourse with the victim.

Upon review of the record, on writ of error, the Court affirms the judgment of the lower court.

The facts are as follows:

At around 6:00 in the evening of January 12, 1992, Lourdes Arroyo, a grade six, fourteen-year old girl, was cooking dinner in her house located at General Prim West, Bangar, La Union.[5] She was with a younger sister while their parents went to the river to see their fishing gadgets.[6] At that moment, a cow strayed into their house and Lourdes drove it outside where their other cows were grazing. After Lourdes tied the cows' rope to the ground, the accused appeared and dragged Lourdes by the hand to the side of the nearby river.

Upon reaching a stony part of the river, the accused pushed Lourdes to the ground and tried to remove her garter short-pants and panty. Although Lourdes fought off the accused and tried to free herself by shaking her body, she could not do anything for she was pressed and pinned down by the strong hands of the accused. Ultimately, when Lourdes was already lying on the ground, accused succeeded in taking off her short-pants and panty. He removed his own pants and went on top of her. He started kissing her and fondling her breasts, even as she tried to free herself from his clutches. Lourdes tried to scream but the accused threatened to kill her if she would scream for help. He forcibly parted Lourdes' legs and inserted his penis into her vagina. After consummating his carnal lust, accused released his hold on her and she was able to free herself. Lourdes put back her panty and short pants, and ran away from him.[7]

Upon reaching her house, Lourdes discovered that her parents had been looking for her. She told her mother that she had been raped.

The next day, Lourdes executed a statement to the police. She also submitted herself to a medical examination at Bungol Emergency Hospital.[8]

The results of the medical examination revealed the following:

"x x x On the Chest/lung: There is a contusion seen infrascapular area, right. On pelvic examination - it revealed a pubertal. -external female genitalia; with pubic hair noted at the symphysis; the labia majora are coapted covering completely hyperemic labia minora; hymen noted with laceration fresh at 7:00 o'clock position with minimal bleeding. Vaginal smear revealed a negative sperm cell."[9]

According to the medico-legal expert, there was a contusion on the back part of the right shoulder of the complainant. Also, sexual intercourse was apparent from the findings of fresh laceration of the hymen and the bleeding.[10]

As a result of the rape, Lourdes got pregnant and gave birth to a baby girl.[11]

The accused does not deny that he had sexual intercourse with complainant. He asserts, however, that the complainant was his sweetheart and that it was even the complainant who initiated the act.

He testified that he knew Lourdes before the incident because he had visited her in her school about five times and that they were sweethearts.[12] He had visited her even at her house about eight times and had gone to the house of her aunt to get firewood.[13] He gave her a fancy ring and she gave him a letter. He, however, lost the letter.

He testified further that on January 12, 1992, he visited complainant in her house and talked to her for about fifteen minutes, after which they went behind the house to continue their conversation. He invited her to go to the river and the latter went voluntarily with him. They first sat alongside the river. Then they started embracing each other while the complainant was saying, "I love you very much." [14] The complainant suggested that they have

sexual intercourse and that "they will do the thing now".[15] The complainant went about four meters from the accused. The accused watched as the complainant removed her panty. After removing her panty, she called for the accused so that they would have sexual intercourse. The accused removed his pants, went on top of her, spread her legs and performed the sexual congress.

Other than his assertion, however, there was no evidence to show that they were sweethearts. Complainant denied any relationship between them, although she admitted that she knew him as a frequent visitor of her aunt. No corroborating witnesses supported the self-serving assertions of the accused. No love letter, memento, or pictures were presented by accused to prove that such romantic relationship existed.

Accused also claimed that the complainant Lourdes did not put up any resistance when she was being led to the river. The accused argued that he did not have any weapon with him at the time and the complainant had several opportunities to escape if indeed she had been forcibly taken.

It is an established rule that failure to shout or offer tenacious resistance does not necessarily make voluntary complainant's submission to the criminal acts of the accused.[16] Although Lourdes was not able to shout or repel the accused, it did not mean that she acquiesced to the sexual act. Accused had threatened to kill her if she would scream for help. He was strong enough to drag her to the nearby river. He was also so strong as to forcibly push her to the ground. Lourdes, under the circumstances, was overwhelmed with fear that all she could do was to push the accused and resist his advances. She fought back but he was stronger.[17]

Furthermore, the medical findings showed that Lourdes suffered an abrasion at the back of her right shoulder, indicating that she had been forced to lie on her back. Abrasions on the victim's body are ample proof of struggle and resistance against rape.[18]

The fact that there was no weapon used by the accused does not rule out force in the rape committed.[19] The force necessary in rape is relative, depending on the age, the size and the strength of the parties.[20] When applied, such force need not be overpowering or irresistible.[21] What is essential is that the force used is sufficient to consummate the purpose which the offender had in mind, or to bring about the result.[22] Intimidation must be viewed in light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.[23]

In this case, Lourdes tried to struggle but accused was too strong for her.[24] In fact, the physical superiority of accused clamped down not only the body of the victim but also her mind, for he succeeded in totally intimidating her, using his physical strength as a weapon.[25] Also, accused threatened to kill her if she would scream for help. For a young girl of fourteen, these conditions were sufficient to overcome her will to resist and escape.[26]

Consequently, the trial court correctly gave full weight and credence to the testimony of complainant. It is highly inconceivable for a young barrio lass, inexperienced with the ways of the world, to fabricate a charge of defloration, undergo a medical examination of her private parts, subject herself to public trial and tarnish her family's honor and reputation unless she was motivated by a potent desire to seek justice for the wrong committed against her.[27] The trial court even noted that the complainant was crying when she related the incident in court, thereby proving the difficulty in making her shame known to the public.[28]

The prompt report of the incident to the authorities, the medical findings supporting the commission of the rape, and the candid and convincing testimony of complainant all contribute to the sufficiency of proof against accused-appellant.

We note, however, that the trial court awarded only the amount of P50,000.00 to Lourdes L. Arroyo as moral damages. Pursuant to recent jurisprudence, an indemnity in the amount of P50,000.00 must be given to victims of

rape. Civil indemnity is mandatory upon the finding of the fact of rape; it is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion.[29]

IN VIEW WHEREOF, the Court hereby AFFIRMS the appealed decision sentencing the accused appellant Mario Marabillas y Cañeda to reclusion perpetua and the accessory penalties provided for by law; and to indemnify the complainant the amount of P50,000.00 as moral damages, without subsidiary imprisonment in case of insolvency, with the MODIFICATION that appellant shall pay the victim Lourdes L. Arroyo the additional amount of P50,000.00 as indemnity.

With costs.

SO ORDERED.

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

[1] Penned by Judge Senecio O. Tan.

[2] Rollo, p. 8.

[3] On April 30, 1992, Records, p. 18.

[4] Rollo, p. 26.

[5] tsn, August 7, 1992, pp. 3-6.

[6] tsn, April 27, 1988, p. 9.

[7] tsn, August 7, 1992, pp. 9-12.

[8] tsn, August 7, 1992, p. 13.

[9] tsn, December 10, 1992, p. 3.

[10] tsn, December 10, 1992, p. 4-5.

[11]tsn, April 27, 1993, pp. 15-16.

[12] tsn, August 3, 1993, p. 2.

[13] tsn, August 3, 1993, pp. 3, 10.

[14]tsn, August 3, 1993, p. 19.

[15] tsn, August 3, 1993, p. 20.

[16] People v. Dupali, 230 SCRA 62.

[17] tsn, August 7, 1992, p. 31.

[18] People v. Mostoles, Jr., 124 SCRA 906.

[19] People v. Domingo, 226 SCRA 157.

[20] People v. Moreno, G. R. No. 126921, August 28, 1998.

[21] People v. Errojo, 229 SCRA 56.

[22] People v. Gan, 46 SCRA 677.

[23] People v. Antonio, 233 SCRA 299.

[24] tsn, August 7, 1992, p. 31.

[25] People v. Domingo, 226 SCRA 170.

[26] People v. Tabayan, G. R. No. 128481, September 25, 1998.

[27] People v. Esguerra, 256 SCRA 657; People v. De Guzman, 265 SCRA 228.

[28] tsn, August 7, 1992, p. 9.

[29] People v. Prades, G. R. No. 127569, July 30, 1998.

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