

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICIANO U. SAGAYSAY, ACCUSED-APPELLANT.

G.R. No. 128818. June 17, 1999

Ponente: VITUG, J.

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VITUG, J.:

Feliciano U. Sagaysay appeals from the decision of the Regional Trial Court of Barili, Cebu, Branch 60, in Criminal Case No. CEB-BRL-005, convicting him of the crime of rape, imposing upon him the penalty of reclusion perpetua, and ordering him to pay the offended party the amount of P50,000.00 as indemnity and another sum of P25,000.00 as exemplary damages.

Earlier, Sagaysay was charged in an information that read:

"The undersigned, at the instance and upon a sworn complaint filed by the offended party, accuses FELICIANO U. SAGAYSAY of the crime of Rape, committed as follows:

"That on or about the 8th day of October, 1995, at 7:00 o'clock in the evening, more or less, at Barangay Tapon, Municipality of Dumanjug, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with JULIE PULGO, a girl below twelve (12) years of age, against her will and consent."

"CONTRARY TO LAW."[1]

Trial ensued following a plea of "not guilty" by the accused.

The evidence for the prosecution, synthesized in the People's brief, is narrated in this wise; viz:

"On October 8, 1995, at around 7:00 o'clock in the evening, Julie Polgo asked permission from her mother, Demetria, to watch television in the house of Macaria Sameon, their neighbor, which was located about 150 meters away in Barangay Tapon, Dumanjug, Cebu. Her mother consented (pp. 5-9, TSN, January 11, 1996).

"While Julie walked towards her destination and having gone about 30 meters away from their house, appellant Feliciano Sagaysay suddenly appeared. He approached Julie and grabbed her. Julie tried to escape but appellant clutched her left arm tightly and dragged her towards a thicketed area, about 60 meters away (pp. 5-9, TSN, supra).

"When they reached a secluded spot, appellant, who was armed with a knife, proceeded to undress Julie. He removed her panty. Appellant also took off his clothes. Then he carried Julie bodily. Julie tried to shout for help but in vain because she was gagged with a handkerchief tightly knotted at the back of her neck (pp. 5-9, TSN, supra). Terrorized by appellant who carried a knife, Julie did not anymore attempt to run away.

"Appellant kissed Julie all over and mashed her breasts. He then removed his brief. He forced Julie to lie down on her back and initiated acts of sexual intercourse. Julie saw appellant's penis. When it slightly penetrated her vagina, she cried out because of excruciating pain (pp. 5-9, TSN, supra).

"After satisfying his lust, appellant forcibly dragged Julie towards his house, about 150 meters away. There, Julie was forced to spend the night (pp. 9-10, TSN, supra).

"The following morning, Julie's parents together with their children and neighbors looked for Julie. Appellant appeared and told them that Julie was asleep in their house. So, they all went there to fetch her (pp. 5-6, 25, TSN, MARCH 6, 1996).

"When they saw Julie inside the house, she broke down in tears. When they got home, she immediately told them that appellant raped her (pp. 5-6, TSN, supra).

"The incident was reported to the police and Julie was physically examined by Dr. Octavio Ortiz on October 11, 1995. A Medical Certificate (Exhibit B) was issued with the following findings:

"1. contusion and swelling of labia minor (right side);

"2. contusion at the right side of the perineum;

"3. whitish secretion seen at the vaginal orifice; and

"4. Hymen not lacerated.

"That the injuries were brought about or caused by direct contact with a dull object which will take fifteen to twenty days to heal under favorable condition with no complications; that the perineum is the side where the vagina is located."[2]

Accused-appellant, anchoring his defense mainly on denial, presents a different version of the case; his story-

"On 8 October 1995, the date the alleged sexual assault was committed, accused-appellant attended to his daily chores. He fed his cows and thereafter, he went to earn his living as a 'trisikad' driver ferrying passengers in Dumanjug, Cebu (ibid., pp. 6-7).

"At 5:00 o'clock in the afternoon, accused-appellant and Juan Polgo, the father of Julie, went fishing. An hour later, they proceeded to the house of a certain Nata, an aunt of accused-appellant, where they drank 'tuba.' After another hour had passed, they went home. At their house, accused-appellant cooked the fish he caught and then took his supper. Afterwards, he smoked and proceeded to the chapel where he stayed for thirty minutes (ibid., pp. 7-10).

"Accused-appellant met Julie at the chapel. When he was on his way home, he then noticed that she was following him. Reaching their house, he advised her to go home but she refused to for fear of being whipped. And since she was insistent in not going home, he provided her with mat and pillow to sleep on (ibid., pp. 12-13).

"Early the following morning of 9 October 1995, Juliet Polgo arrived at the house of accused-appellant looking for her younger sister Julie. Accused-appellant readily informed Juliet that her sister was sleeping upstairs. Juliet went inside the house, pulled Julie and brought her outside. While there, Juliet grabbed and squeezed with her right hand the vagina of her sister (ibid., pp. 16-19).

"Melchora Antiampo, a neighbor of accused-appellant, witnessed what Juliet did to her younger sister. At that time, Melchora accompanied a nephew to a barber shop to have a haircut when Juliet passed by and asked the barber if her sister Julie was at accused-appellant's house. Receiving an affirmative response, Juliet proceeded thereat. Melchora followed as she noticed that Juliet was very angry (TSN, 16 May 1996, pp. 5-6).

"Julie went straight to the upper floor of the house of accused-appellant where she found Julie. Juliet then grabbed her sister, pinched and squeezed her vagina, and led her home. Julie could only cry and shout in pain (ibid., pp. 6-8)."[3]

Insisting on his innocence, the accused, in the present appeal from the decision of the trial court convicting him of

rape under Article 335 of the Revised Penal Code, has generally averred:

"THAT THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF RAPE DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT." [4]

Appellant would have it that no statutory rape was possible since the complainant herself admitted at the witness stand that she was already twelve (12) years old when sexually molested by appellant. The statement about her age should be clarified. When recalled by the trial court during the hearing on 16 May 1996, the complainant categorically stated that she was born on 16 October 1983. Hence, at the time of the commission of the rape on 08 October 1995, Julie Polgo, was still, at least by a few days, under twelve years of age. At any rate, the age of a woman would become inconsequential in a prosecution for the crime of rape once established that carnal knowledge had taken place with the use of force and intimidation.[5] These attendant circumstances were shown to have been employed by the accused.

The victim gave a vivid account of the incident in her testimony before the court; thus:

"Q. Now, Miss Witness, going back to the incident of October 8, 1995, around 7:00 o'clock in the evening, do you remember where were you during that time?

"A. I asked permission from my Mother to watch T.V.

"Q. Tell us, what part of the place did you ask permission from your mother to watch T.V.

"A. In our house.

"Q. What time was that when you asked permission?

"A. Around 7:00 o'clock in the evening, more or less.

"Q. Did your mother permit you?

"A. Yes, Sir.

"Q. Where was that place where you intended to see the T.V.?

"A. At our neighbor's house.

"Q. Tell us the owner, your neighbor who owns the T.V.

"A. Macaria Sameon.

"Q. How far is it from your house to the house of Macaria Sameon? From where you are sitting, how far is the house?

"A. From here to that coconut tree.

"x x x x x x x x.

"ATTY. LAZARTE:

"Q. Were you able to watch T.V.?

"A. No, Sir.

"Q. Why, what happened?

"A. The accused dragged me.

"Q. How far were you when someone dragged you from your house?

"A. About thirty (30) meters, more or less.

"Q. Did you notice who was that person who dragged you when you were 30 meters away from your home?

"A. Yes, him.

"Q. Are you referring to whom?

"A. Him.

"ATTY. LAZARTE:

Witness is pointing to the accused, Feliciano Sagaysay.

"Q.

In what manner did Feliciano Sagaysay drag you at that point of 30 meters away from your house?

"A. He held me in my left arm.

"Q. And what else did Sagaysay do to you aside from holding your left arm?

"A. He brought me to a ticket or grassy area.

"Q. How did Feliciano Sagaysay carry you to that thicket?

"A. He dragged me.

"Q. How far was the distance from where Feliciano held you and dragged you to that thicket?

"A. From here, to that star apple tree outside of this building.

(Estimated by the Court to be 60 meters, more or less.)

"Q.

Was that place an uphill or a downhill?

"A. It was an uphill.

(Witness pointing an upward direction.)

"Q. When you reached that secluded and thicketed place, what did this Feliciano Sagaysay do to you?

"A. He undressed me.

"Q. And aside from undressing you, what else did Feliciano Sagaysay do to you?

"A. He removed my panty.

"Q. After you were already undressed, including your panty, what did this Feliciano Sagaysay do to you?

"A. Feliciano undressed himself.

"Q. And after he was already undressed also, what did Feliciano do to you?

"A. He carried me on his arms.

"Q. And with all these moments that you were being dragged and undressed and Feliciano also undressed himself and carried you in his arms, did you not shout for help?

"A. I shouted but he covered my mouth.

"Q. How loud was your intended shout, please demonstrate to this Honorable Court?

"A. I was not able to shout.

"Q. Why were you not able to shout?

"ATTY. FLORES:

Already answered, your honor. The accused covered her mouth.

"COURT: Witness may answer.

"A. He tied my mouth.

"ATTY. LAZARTE:

"Q. Now, this time the accused tied your mouth, what did he use in tying your mouth?

"A. He used a handkerchief in tying my mouth.

"Q. Was the handkerchief tied at the back of your neck?

"A. Yes, Sir.

"Q. Was it tight?

"A. Yes.

"Q. Now, while you were in that position, you were being carried and your mouth was being tied, what did Feliciano Sagaysay do to you?

"A. He kissed me and fondled my breast.

"Q.

And after you were being kissed, romanced by the accused, fondled your breast or nipple, which nipple?

"A. Both my nipples.

"Q. And aside from fondling what else did Feliciano do to you?

"A. He removed his brief.

"Q.

While he pulled down his underwear, did you see something?

"A. Yes, Sir.

"Q.

Tell this Honorable Court what was that you were able to see?

"A.

His penis.

"Q. And what did the accused do with his penis?

"A. He started inserting his penis into my vagina?

"Q. How long did Sagaysay start inserting his penis inside your vagina?

"A. It took a long time.

"Q. And as a result, the penis of Sagaysay was able to enter your vagina?

"A. The penis was able to penetrate slightly because I was able to shout.

"Q. And after the accused Sagaysay finished on his lust love making on you, where did you go next?

"A. In the house of the accused."[6]

Appellant denies the use of force or intimidation since there has been, he claims, no real and serious struggle nor determined effort on the part of the victim to preserve her virtue. The Court is not convinced. The resistance on the part of the victim need not be carried to the point of inviting death or sustaining physical injuries at the hands of the rapist.[7] It suffices that the coitus takes place against her will, or that she yields because of a genuine apprehension of great harm.[8] In the past, this Court has held that no standard form of behavior has been observed when a person is confronted by a shocking and unexpected incident, and the workings of the human mind when placed under emotional stress are truly unpredictable. Some people may cry out, some may faint, some may be shocked into insensibility, while others may yet appear to welcome the intrusion.[9] Force or violence required in rape cases is relative. When applied, it need not be overpowering or irresistible; it is enough that it has enabled the offender to consummate his purpose or to bring about the desired result.[10] It is not even necessary that the offender be armed with a weapon although the use thereof can serve to increase the penalty.[11]

The trial court has correctly imposed the penalty of reclusion perpetua. What can qualify the offense under Republic Act 7659 so as to warrant the imposition of the death penalty would be when the rape is committed with the use of a deadly weapon and not just the overt act of "being armed with a weapon." [12] Although the victim in the instant case has testified about the accused being armed with a knife, the record, however, is bereft of evidence to show that he actually has used it, the knife having all along been just tucked in at the back of his

trousers.

The award of civil indemnity is proper except for the exemplary damages of P25,000.00. Exemplary damages, under Article 2230 of the Civil Code, may be imposed only when the crime is committed with one or more aggravating circumstances. No such circumstance has been proven in the case at bar.

WHEREFORE, the guilt of Feliciano Sagaysay having been proved beyond reasonable doubt, the decision appealed from is AFFIRMED except for the award of exemplary damages which is hereby DELETED. Costs against accused-appellant.

SO ORDERED.

Romero, Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Rollo, p. 6.

[2] Rollo, pp. 83-85.

[3] Rollo, p. 54.

[4] Rollo, p. 51.

[5] Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

- By using force or intimidation;
- When the woman is deprived of reason or otherwise unconscious; and
- When the woman is under twelve years of age or is demented. (Section 11, Republic Act 7659, An act to Impose the Death Penalty on Certain Heinous Crimes.)

[6] TSN, Julie Polgo, 11 January 1996, pp. 5-9.

[7] People vs. Soberano, 244 SCRA 467.

[8] People vs. Casao, 220 SCRA 362; citing People vs. Barcelona, 191 SCRA 100 and People vs. Abonada, 169 SCRA 530.

[9] People vs. Abonada, 169 SCRA 530; citing People vs. Fernandez, 165 SCRA 302; People vs. Malunes, 247 SCRA 317.

[10] People vs. Mendoza, 163 SCRA 569.

[11] People vs. Sato, 163 SCRA 602.

[12] People vs. Poculan, 167 SCRA 176.

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