

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMULO SAN DIEGO Y ESPIRITU, ACCUSED-APPELLANT.

G.R. No. 129297. March 17, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 80, Tanay, Rizal, finding accused-appellant Romulo San Diego guilty of rape and sentencing him to suffer the penalty of reclusion perpetua, to pay complainant Ailene G. Ebreo P50,000.00 as moral damages, plus costs.[2]

The information against accused-appellant reads:

That on or about the 1st day of September, 1995, in the Municipality of Morong, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with Ailene G. Ebreo, without her consent and against her will.

CONTRARY TO LAW.

Tanay, Rizal, December 13, 1995.

Upon arraignment, accused-appellant pleaded not guilty, whereupon, he was tried.

The prosecution's version of the case, based mainly on the testimony of complainant and her mother, is as follows:

On September 1, 1995 at around 5 P.M., upon arriving home in Cherry II, San Jose, Antipolo, Rizal, Ailene G. Ebreo realized that she had left her umbrella in the tricycle from which she alighted. Fearing that her sister would scold her for this, she asked permission from her mother to go out and look for the umbrella. Ailene took a tricycle driven by accused-appellant to go to the town proper of Teresa, Rizal where she planned to look for her missing umbrella. She noticed that accused-appellant was only driving in circles, so he asked accused-appellant to stop and let her off. Accused-appellant, however, paid no heed and instead, drove the vehicle towards San Guillermo, Morong, Rizal, where, at knifepoint, he forced complainant to go inside a house which was in a rather uninhabited place. Ailene noticed a man inside the house. Accused-appellant then locked Ailene inside a room. She tried to escape but failed to do so because someone was guarding her. She screamed and cried to no avail.

At 9 P.M., accused-appellant returned. He started kissing Ailene while poking a knife at her side. She begged him to have pity on her, but accused-appellant boxed her in the stomach. So, Ailene stopped protesting. Accused-appellant then removed Ailene's underwear and inserted his penis into her vagina. She was warned that if she reported the incident, something dire would happen to her family. ("May kukunin siya sa amin.") [3]

Ailene testified that accused-appellant had sexual intercourse with her, kissed and fondled her breast, for three hours. She also claimed that accused-appellant again raped her the following morning, and this time the

intercourse lasted two hours.

Ailene claimed she did not resist because she wanted to gain the trust of accused-appellant so she could then escape from him. She said she even kept accused-appellant company wherever he had drinks with his friends. She further said that accused-appellant used drugs and made her take some against her will.

Ailene also testified that she went with accused-appellant whenever he would make trips on his tricycle around Morong and Antipolo. She would sit on the driver's seat, holding on to accused-appellant for support. They were often at the Teresa Public Market where accused-appellant picked up passengers.[4]

On October 18, 1995, 48 days after she was allegedly abducted by accused-appellant, Ailene was found by her parents inside accused-appellant's tricycle which was then parked near the Teresa Public Market. Ailene was then alone as accused-appellant was elsewhere calling for passengers. According to Ailene, when she saw her mother, she ran towards her and told her what had happened to her.[5]

Nenita Ebreo, Ailene's mother, corroborated her daughter's testimony. According to Nenita, when her daughter left their house on September 1, 1995 at around 5 P.M. to look for the missing umbrella, she did not expect her to return home that day because Ailene was then staying with her other daughter, Iryne Ebreo, in Dela Paz, Antipolo. Ailene would go home to her parents house in Cherry II Subdivision on the 15th and 30th day of each month to bring groceries to her mother. Hence, on September 16, 1995, Nenita decided to look for Ailene in Iryne's house. It was only then that she learned that Ailene was missing.[6]

Nenita said she and her husband went around to look for their daughter but to no avail. They went around Morong and Antipolo asking some tricycle drivers for the whereabouts of Ailene, but no one could tell them where she was.[7] Several days later, they learned that Ailene was being held by a "Kan Roy," the name by which accused-appellant is known in Teresa.

But it was only on October 18, 1995, that Nenita and her husband finally found Ailene in the public market. According to Nenita, Ailene ran towards her. She was allegedly in shock and did not talk throughout the trip home. It was only much later that Ailene was able to tell her parents that she had been raped by accused-appellant.[8]

On October 22, 1995, Ailene, accompanied by her parents, went to the Morong Police Station and filed a complaint against accused-appellant.[9] On October 23, 1995, she was examined at the Philippine National Police (PNP) Crime Laboratory by Dr. Owen Lebequin whose report states:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with brown areola and nipples from which no secretion could be pressed out. Abdomen is flat and soft.

GENITAL:

There is moderate growth of pubic hair. Labia majora are full, convex and gaping with the light brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type hymen with deep healed lacerations at 5 and 8 o'clock and a shallow healed laceration at 3 o'clock. External vaginal orifice offers no resistance to the introduction of the examining index finder and the virgin-sized vaginal speculum. Vaginal canal is narrow with prominent rugosities. Cervix is normal in size, color and consistency.

CONCLUSION:

Subject is in non-virgin state physically.

There are no external signs of application of any form of violence.

REMARKS:

Vaginal and peri-urethral smears are negative for gram-negative diplococci and for spermatozoa.[10]

Dr. Lebequin testified that he had been informed by Ailene that her menses had been delayed for one month and a half. He asked Ailene to come back for a pregnancy test, but she never did.[11] When Ailene testified in court on February 26, 1996 she said she was about six months pregnant.[12]

Accused-appellant, on the other hand, gave a different version of what happened. He claimed it was a case of consensual sexual intercourse.

According to him, on September 1, 1995, at around 5 P.M., Ailene boarded his tricycle at the Teresa Public Market and asked him to take her to Antipolo. However, upon reaching Antipolo, she did not alight from the tricycle and instead asked to be taken back to the public market. So, he drove her back to the market and there, when he asked Ailene if she wanted to come with him, she agreed. They then proceeded to San Guillermo, Morong, Rizal to the house of Mrs. Loida da Silva, who is a friend of accused-appellant. Loida's husband worked abroad and she was living alone with her child. Accused-appellant introduced Ailene to Loida. Accordingly to him, he and his friends, Romulo delos Santos and Ariel San Jose, had agreed to have a drinking session in Loida's house on that day.[13] Thus, when Romulo delos Santos and Ariel San Jose arrived, they began their drinking session. Ailene sat beside accused-appellant while they drank. Loida also stayed with the group, although she was not drinking.[14]

At 10 P.M., accused-appellant asked Loida for permission to use her bedroom. He and Ailene then went inside the bedroom and stayed there for two hours.[15] Accused-appellant claimed that Ailene agreed to have sex. He added that from her reaction during their intercourse, he could tell that Ailene already had previous sexual experience.[16]

Accused-appellant said that at 12 midnight, he went out of the room and joined his friends in having drinks. After his friends left, he and Ailene stayed behind and slept in Loida's house as Ailene had allegedly refused to go home.[17] Romulo de los Santos fetched Ailene the next morning, at 8 A.M., and took her back to the Teresa Public Market.[18]

About a week later, accused-appellant saw Ailene in the public market and the latter invited him to have another rendezvous in Loida's house. He agreed and the two had another tryst in Loida's house. According to him, this was repeated on two other occasions ¾ all upon the initiative of Ailene.[19]

Defense witnesses Romulo de los Santos, Ariel San Jose, and Loida da Silva corroborated the testimony of accused-appellant.[20] According to Loida da Silva, she thought accused-appellant and Ailene were sweethearts.[21]

Accused-appellant, aside from denying the charge of rape, also claimed the case against him was made by Ailene's family to extort money from him. According to accused-appellant, when he was arrested and put in jail, Ailene's father came and told him that if he wanted to settle the case, he should talk to a certain Major Kahuday.[22] He and his parents then sought out this officer, who warned them that the charge was a serious one which he might refer to the media. Thereafter, Ailene's father asked for P5,000,000.00 to settle the case, but accused-appellant's parent refused.[23] The parties met a second time with Major Kahuday who suggested reducing the consideration for the settlement of the case to P1,000,000.00. As accused-appellants could pay only P60,000.00, no settlement was reached and the case proceeded to trial.[24]

The trial court found accused-appellant guilty and sentenced him as follows:

WHEREFORE, the prosecution having established the guilt of the accused beyond reasonable doubt, judgment is hereby rendered convicting the accused of the crime of rape and sentences him to suffer the penalty of reclusion perpetua. The accused is also ordered to pay the offended woman the amount of P50,000.00 as moral damages and to pay the costs.

In the service of his sentence the accused is credited with the full period of his preventive imprisonment during the pendency of this case.

SO ORDERED.[25]

Hence this appeal. Accused-appellant assigns the following errors as having been allegedly committed by the trial court:

- THE TRIAL COURT SERIOUSLY ERRED IN RELYING ON THE DEMEANOR OF THE COMPLAINANT, HER ALLEGED ABSENCE OF MOTIVE AND THE FACT THAT SHE ALLEGEDLY IMMEDIATELY REPORTED THE INCIDENT TO THE POLICE AUTHORITIES;
- THE TRIAL COURT A QUO SERIOUSLY ERRED IN CONVICTING THE ACCUSED ON THE BASIS OF THE INCREDIBLE AND CONFLICTING TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE CLEAR, CONVINCING AND WELL-CORROBORATED TESTIMONY OF THE ACCUSED;
- THE TRIAL COURT ERRED IN DISREGARDING THE TESTIMONY OF PROSECUTION'S EXPERT WITNESS THAT CREATES REASONABLE DOUBT IN FAVOR OF THE ACCUSED.[26]

In convicting accused-appellant, the trial court stated:

There is no doubt in the mind of this Court that Ailene Ebreo, the offended woman, was indeed a victim of rape. The Court has observed her very closely while testifying and found her demeanor consistent with her desire of obtaining redress for her grievance. She was hysterical and was crying at the sight of the accused, thus, disproving that there existed a relationship between them. Her outburst and cursing look at the accused while testifying manifested the rage that she had against the accused after being subjected to a series of sexual assaults which culminated in her untimely pregnancy. Th[is] demeanor of the complainant ha[s] reinforced the credibility of her testimony that she was indeed threatened with a knife and forcedly brought inside a house where she was detained and sexually abused by the accused. The Court cannot find any motive why the complainant would file a serious case and testify against the accused if she was not a victim of rape. While it is true that the complainant later relented and submitted her body to the accused even it was against her will so as to give her the opportunity to escape, such an act did not in any manner diminish the liability of the accused for the previous sexual assaults he committed. The complainant categorically stated that she did it because she had no chance to fight the accused. It should be noted that the complainant immediately informed her parents about what happened to her and thereafter, they immediately reported the incident to the police authorities. It is hard to believe that the complainant who was only a 17 year old unmarried girl at the time of the incident would publicly disclose her ordeal, would allow the examination of her private parts, and would undergo the ordeal of a public trial if her motive was not to bring to justice the accused who caused her wrong.[27]

The Solicitor General filed a Manifestation and Motion in Lieu of Appellee's Brief, recommending the reversal of the decision of the trial court and the acquittal of the accused. He contends that the testimony of Ailene Ebreo is not credible as she had several opportunities to escape from accused-appellant but did not do so. He also finds inconsistencies in Ailene's testimony, while that of accused-appellant was corroborated on material points by witnesses.[28]

After a careful consideration of the records, we find the appeal meritorious.

The factual findings of the trial court are generally accorded great respect unless it is shown that certain facts of value have been plainly overlooked.[29] In the case at bar, the trial court relied on Ailene's testimony, which, to our mind, failed to engender that well-founded belief that accused-appellant committed the crime.

In rape cases, courts are guided by the following considerations:

- (1) An accusation for rape can be made with facility; it is difficult to prove but more difficult for the person, though innocent, to disprove the same;
- (2) In view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and
- (3) The evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[30]

Applying these guidelines, we hold that Ailene's testimony can not pass muster, especially given the requirement that the prosecution must prove beyond all reasonable doubt that accused-appellant is guilty.

First. Art. 335 of the Revised Penal Code, before its amendment by R.A. No. 8353 (the Anti-Rape Law of 1997), provided:

Art. 335. When and how rape is committed.—Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented. . . .

Ailene alleges that force and intimidation were used against her by accused-appellant.[31] However, her account of how the rape took place and her demeanor during the one month and a half that she was allegedly detained by accused-appellant is not credible. We cannot imagine how accused-appellant could have undressed her, kissed her all over her body, fondled her private parts, insert his penis into her vagina, and mashed her breasts while all the time pointing a knife at her side. The duration of the alleged rape — three hours — during which, Ailene said, accused-appellant kissed her all over the body before inserting his penis into her vagina, tends to show that accused-appellant and complainant engaged in consensual sex rather than that complainant had merely been forced into the act.

Indeed, we have ruled that the test of sufficiency of force or intimidation in rape is whether it produces a reasonable fear in the victim that if she resists or does not give in to the sexual demands of the accused, the threat would be carried out.[32] Assuming that a knife was really poked at Ailene's side, it could not have been held by the accused-appellant for the entire three-hour period that she was being raped. Ailene could have done something during that time to fight off accused-appellant.

Besides, we cannot understand how Ailene could have been frightened by the warning, "May kukunin ako sa inyo," which was allegedly uttered by accused-appellant while he was raping her. If at all, threats of this kind are generally made by rapists to prevent their victim from reporting the rape rather than to force submission to their demands.

Second. Ailene claimed that she did not resist when she was being raped because she wanted to gain accused-appellant's trust and thereby be able to escape. Thus, Ailene testified:

ATTY. TAPUCAR:

Now you said that there was a time that you [were] calm, "tumahimik ka na at nagkalma ka sa sarili." [N]ow after September 1, 1996, how long did you calm your self?

WITNESS:

About two (2) weeks, sir.

ATTY. TAPUCAR:

And in that two (2) weeks time [that] you have calm[ed] yourself, you were suffering from some kind of trauma, is that correct?

WITNESS:

Yes, sir.

COURT:

You stated that you calm[ed] down[;] does this mean that you were no longer resisting the accused with respect to his advances.

WITNESS:

No more, sir.

ATTY. TAPUCAR:

And that lasted to October 18, 1995?

WITNESS:

Yes, sir.

ATTY. TAPUCAR:

And that is the reason why you have calm[ed] yourself, you freely, voluntarily went with him in his trips?

WITNESS:

Even [if] it was against my will I was forcing to hide [it to] myself, sir.

ATTY. TAPUCAR:

Now in other words you were no longer resisting his advances or desire?

WITNESS:

What can I do, sir. "Wala akong laban"

ATTY. TAPUCAR:

And you got used to it already?

WITNESS:

Even if it was against my will I was doing . . . whatever he told me to do, sir.

ATTY. TAPUCAR:

At that time you were already accepting the food he was giving you or money?

WITNESS

I was not accepting money, he was always giving me money and buying medicine.[33]

Granting that Ailene had been cooperative in order to gain accused-appellant's trust and so she could escape, it was shown that she had several opportunities to do so yet she did not make any attempt to escape. On the contrary, she was seen with accused-appellant in the public market as accused-appellant was a tricycle driver. As she herself admitted, she would often hitch a ride on the tricycle, sitting on the driver's seat behind accused-appellant, all the time holding on to him for support. Thus, Ailene testified:

COURT:

When did you start going with the accused after you were detained . . . and [had] sexual intercourse with him?

A I cannot remember.

COURT

So from the house where you were detained, you went with the accused in going to Teresa?

A Yes, sir.

COURT

Do you mean to tell us, you boarded the tricycle in which he is driving in going to Teresa?

A

When ever he is faring he used to tug me along.

COURT

If he get[s] passenger, the passenger sits on the tricycle and where were you seated?

A At the back ride, sir.

COURT

These passengers are brought by the accused to their respective destination?

A Yes, he is going up to Abuyod.

COURT

So while on board the tricycle of the accused you were holding on the body of the accused?

A Yes, sir.

COURT

And what time did you usually go with the accused in conveying a passenger?

A In the morning.

Q Until what time did you go home?

A Noon.

Q

In the afternoon you no longer go with the accused in conveying a passenger?

A No more.

Q

What places in Teresa did you go during the time that you were with the accused?

A Up to Abuyod and sometimes at Pantay Dalig.

Q And even in the plaza of Teresa?

A

Yes, it is the place where he pick[s-up] passenger[s].

Q And this is very near the PNP station of Teresa?

A It is quite far.

Q All the time that he is waiting for passenger[s] you were also seated at the back [of] the tricycle?

A

Yes, sir.

Q And you did not show [any] person dealing with the accused that you are under restrain[t] by the accused?

A No, sir.

Q And in fact you did not even [try] to escape at that time?

A I wanted to escape but I am afraid, he is big and he might catch me up.

COURT

Why did you not run since you were in the plaza and there were many people where they can see you?

A Because he told me that if I will escape, he will get someone from my family.

Q When you were having your personal necessity, so naturally you will go to the comfort room?

A He was watching wherever I go there.

Q Do you mean to tell us that he leave the tricycle and go with you in the CR?

A Yes, sir.

Q Now you stated that you have sexual intercourse with the accused from September 1 to October 18, what happened [on] October 18?

A He left me in the tricycle.

Q Where did he go?

A I do not know where he go.[34]

Never did Ailene signal to anyone who saw her $\frac{3}{4}$ at the public market or in the streets $\frac{3}{4}$ that she was in distress. To the contrary, the defense witnesses testified that they thought accused-appellant and Ailene were lovers.

Third. Ailene's mother, Nenita Ebreo, claimed that she and her husband looked for Ailene, driving around the towns of Morong and Antipolo. But never did they report to the police that their daughter was missing. They failed to seek the assistance of the police even after they had been told that Ailene was with accused-appellant. To cap it all, it appears that Ailene's parents personally knew accused-appellant. As testified by them, accused-appellant was a friend of Ailene's father.

Considering the foregoing, we are inclined to believe accused-appellant's allegation that this case was filed against him to extort money from him, a charge which, significantly, Ailene's parents did not refute.

Indeed, it is cause for wonder why Ailene and her parents waited for days after Ailene was "rescued" before filing a complaint for rape. If their accusations were true, they would have lost no time in charging accused-appellant with the crime. Indeed, there are circumstances in this case which make us believe that the rape charge was

motivated by factors other than the truth as to the commission of the crime, which most likely as the fact of Ailene's pregnancy and the apparent refusal of accused-appellant to support the child. This is clear from the answer given by Ailene in the following portion of her testimony on February 26, 1996.

[ATTY. TAPUCAR:]

Now is it not a fact that it was your father who is very much interested in having this case filed?

WITNESS:

Yes, sir.

. . . .

ATTY. TAPUCAR:

Now I am going to ask you Miss Ebreo honestly who is the father of that which you are now carrying?

WITNESS:

He was the one.

Interpreter

Witness pointing to the accused, Romulo San Diego.

ATTY. TAPUCAR:

And you acknowledge that it is Romulo's baby [which] came out of your womb?

A Yes, sir.

. . . .

ATTY. TAPUCAR:

And that is always the case and you will accept that?

WITNESS:

I will not accept him anymore, sir.

ATTY. TAPUCAR:

Why?

WITNESS:

Because when he noticed that I am pregnant he forced me to drink medicine to abort.[35]

WHEREFORE, the decision of the Regional Trial Court, Branch 80, Tanay, Rizal, is REVERSED and accused-appellant Romulo San Diego is ACQUITTED of the crime of rape.

The Director of Prisons is directed to implement this decision and to report to this Court immediately the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Reynaldo G. Ros.

[2] Rollo, p. 8.

- [3] TSN, p. 14, Feb. 26, 1996.
- [4] Id., at 1-20.
- [5] TSN, pp. 16-18, March 22, 1996; TSN, pp. 18-19, Feb. 26, 1996.
- [6] TSN, pp. 3-6, May 17, 1996.
- [7] Id., at 6-7.
- [8] Id., at 8-12.
- [9] Id., at 12-14.
- [10] RTC Records, p. 74.
- [11] TSN, pp. 8, 12-13, April 12, 1996.
- [12] TSN, p. 22, Feb. 26, 1996.
- [13] TSN, pp. 3-6, Sept. 6, 1996.
- [14] Id., at 7; TSN, pp. 5, 24, June 28, 1996; TSN, pp. 6, 21, July 8, 1996.
- [15] TSN, pp. 7-8, Sept. 6, 1996.
- [16] Id., at 13.
- [17] Id., at 31.
- [18] Ibid.
- [19] Id., at 10-14.
- [20] See TSN, pp. 2-41, July 8, 1996.
- [21] See TSN, pp. 2-54, June 28, 1996.
- [22] TSN, pp. 16-17, Sept. 6, 1996.
- [23] Id., at 41-44.
- [24] Id., at 46-48.
- [25] Rollo, p. 32.
- [26] Id., at 93.
- [27] Id., at 30-31.
- [28] Rollo, pp. 147-154.
- [29] *People v. de los Santos*, 295 SCRA 583 (1998).
- [30] *People v. Gozano*, G.R. No. 125965, Jan. 21, 2000.
- [31] See TSN, pp. 1-39, Feb. 26, 1996; TSN, pp. 1-22, March 22, 1996.
- [32] *People v. Moreno*, G.R. No. 115191, Dec. 21, 1999.
- [33] TSN, pp. 30-31, Feb. 26, 1996.

[34] TSN, March 22, 1996, pp. 14-17.

[35] TSN, pp. 33-34, Feb. 26, 1996.

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