

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO MALACURA Y MALIGRO, ACCUSED-APPELLANT.

G.R. No. 129365. December 04, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision dated May 16, 1997 by the Regional Trial Court of Malabon, Metro Manila, Branch 170, in Criminal Case No. 16762-MN, finding appellant Alberto Malacura y Maligro, a 35-year-old sales supervisor, guilty of the crime of rape, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay complainant Mary Rose Alonzo, his 18-year-old drinking companion, the amount of P50,000.00 as moral damages, P25,000.00 as exemplary damages, and the costs of suit.

There being two different versions of the incident, both sides of the story were succinctly summarized by the Office of the Solicitor-General in its brief. The version of the prosecution is as follows:[1]

...[P]rivate complainant Mary Rose Alonzo testified that on February 11, 1996 at around three o'clock in the afternoon, she was at the house of appellant in Catmon, Malabon (p.3 TSN, May 14, 1996), together with appellant and a certain "Mang Leoding" [Leodegario Merino]. (p. 20, TSN, May 14, 1996). The two (2) invited Mary Rose to join them drink a bottle of gin which they had started drinking (pp. 20-22, TSN, May 14, 1996). Mary Rose accepted the invitation and joined the two (pp. 4-5, TSN, May 21, 1996). While drinking the liquor, the three (3) engaged in conversation and exchanged stories (p. 5, TSN, May 21, 1996).

Sometime thereafter, Mary Rose stood up and went to the toilet (p. 5, TSN, May 21, 1996). When she came out of the comfort room, there was no light in the house (p. 9, TSN, May 21, 1996). Then, she went back to the sala of the house of appellant (p. 5, TSN, May 21, 1996). She continued drinking the gin. After three (3) rounds of gin, she felt dizzy, her mind went blank, lost consciousness (pp. 6-7, TSN, May 21, 1996) and fell down (p. 8, TSN, May 21, 1996).

Still feeling weak due to the amount of alcohol she had imbibed, Mary Rose felt she was being sexually molested (pp. 6-7, TSN, May 21, 1996). Mary Rose claims that, after forcing her eyes to open, she saw the face of appellant in front of her (p. 16, TSN, May 14, 1996).

When Mary Rose woke up at about five o'clock in the morning of the following day (p. 16, TSN, May 14, 1996), she was already on the sofa and not at the place where she lost consciousness (p. 10, TSN, May 21, 1996). She also noticed that her shorts and underwear were "no longer in [its] proper place and it was crumpled" (p. 10, TSN, May 21, 1996).

Mary Rose did not tell anybody of her ordeal. She chose to keep the matter to herself because she was afraid. Allegedly, appellant threatened to harm her and her family if she will report the sexual assault (p. 13, TSN, May 21, 1996 and p. 16, TSN, May 14, 1996).

On March 26, 1996, Dr. Armie M. Soreta-Amil, Medico-Legal officer of the National Bureau of Investigation, (p. 12, TSN, May 14, 1996), performed a medico-genital examination on Mary Rose on the basis of a written request of the aunt of Mary Rose (p. 5, TSN, May 14, 1996). Dr. Umil found that Mary Rose has a distensible

hymen which was intact. This means that the hymen is elastic and allows penetration by an average-sized adult Filipino male organ without producing any laceration (pp. 6-7, TSN, May 14, 1996).

On May 6, 1996, Mary Rose was admitted at the Jose Reyes Medical Center (p. 11, TSN, May 28, 1996). She was diagnosed as undergoing incomplete, non-septic, non-induced abortion. Consequently, a complete curettage was performed on her (p. 8, TSN, May 28, 1996).

The version of the defense, however, is as follows:[2]

Appellant Alberto Malacura testified that in the morning of February 11, 1996, he was at his house in Catmon, Malabon (pp. 3-7, TSN, December 16, 1996). With him were Anastacio Malacura, Zaldy Siatco [should be RIZAL DESIATCO], Mary Rose Alonzo, Rosy (the mother of Mary Rose) and his wife and three kids (pp. 7-8, TSN, December 16, 1996). Appellant was having a drink with Anastacio, Mary Rose, Rosy, and Zaldy (p. 8, TSN, December 16, 1996). At about 2:00 o'clock in the afternoon of the same day, Mang Luding (Leodegario Merino) joined them in their drinking spree (p. 9, TSN, December 16, 1996). They ran out of liquor at around 4:00 o'clock in the afternoon. Mary Rose and Mang Luding [(sic) MANG LEODING] volunteered to buy gin. However, Zaldy, told them not to buy more liquor as he and appellant had work the following day and he wanted to rest. Mary Rose, her mother Rosy, Mang Luding and Zaldy left appellant's house after which, appellant, his wife and three (3) kids fixed their house. Thereafter, appellant's wife prepared their dinner (pp. 10-11, TSN, December 16, 1996).

On March 30, 1996 at around 10:00 o'clock in the morning, appellant was arrested while at the barangay hall of Gulayan, Catmon, Malabon (p. 14, TSN, December 16, 1996).

On April 1, 1996, the complainant filed her complaint[3] charging appellant with the crime of rape, allegedly committed as follows:

That on or about the 11th day of February, 1996 in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and by giving a glass of gin laced with drugs causing the victim to lose partial consciousness and while partially unconscious accused did, then and there, willfully, unlawfully and feloniously have sexual intercourse with MARY ROSE ALONZO Y SAN JUAN against her will and without her consent.

CONTRARY TO LAW.

Assisted by counsel de parte, appellant on arraignment entered a plea of not guilty.[4] Thereafter, trial on the merits ensued.

For the prosecution, the following witnesses testified: (1) complainant Mary Rose Alonzo; (2) Armando Alonzo, father of complainant, who testified that he is separated from the mother of the victim, and that he lives in Sampaloc, Manila, while complainant and her mother live in Malabon. He also stated that he was not familiar with the friends of his daughter;[5] (3) Dr. Armie M. Soreta Umil, medico-legal officer of the National Bureau of Investigation (NBI), who conducted the physical examination on complainant on March 26, 1996. Dr. Umil found that complainant's hymen is distensible, which means it is elastic and can allow full penetration of a normal size male organ without any genital injury. Hence, Dr. Umil opined that she could not tell whether or not complainant had prior sexual intercourse;[6] and (4) Dr. Maria Isabelita L. Maligaya, medical resident at the Jose Reyes Medical Center, who examined complainant on May 6, 1996. Dr. Maligaya testified that complainant was diagnosed to have non-septic, non-induced abortion, and that she performed a completion curettage ("raspa") on complainant.[7]

For the defense, the following witnesses testified: (1) appellant, (2) Rizal Desiatco, a drinking companion; and (3) Rowena Malacura, appellant's 12 year-old daughter.

Appellant flatly denied raping complainant. He claimed that on February 11, 1996, at around 9:00 A.M., he had a drinking session with his brother Anastacio Malacura and Rizal Desiatco. At around 9:30 A.M., complainant (allegedly a tomboy) and her mother joined them. At about 2:00 P.M., Leodegario Merino joined the group. Sometime thereafter, appellant's brother left. At around 4:00 P.M., the group ran out of liquor. Complainant and Merino offered to buy some more, but appellant and Desiatco declined because they had to work the next day. The group dispersed and left the house. Appellant, his wife, and their children started cleaning up. After having dinner, they slept at around 7:00 P.M. Appellant woke up at about 4:00 A.M. the next day and went to work. On March 30, 1996, he was arrested while inside the barangay hall located at Gulayan, Catmon, Malabon, Metro Manila.[8]

Rizal Desiatco corroborated the testimony of appellant. He testified that complainant was the tanggera (server) during the drinking session, and that he rejected complainant's offer to buy gin because he had to work the next day. He left appellant's house at 4:00 P.M..[9]

Appellant's daughter, Rowena, testified that on February 11, 1996, she saw complainant, complainant's mother, Merino, and Desiatco having a drinking session at their house. She said complainant and the mother had lunch at their house, but Merino had lunch at his own house and came back later. At around 4:00 P.M., the drinking session broke up. She closed their doors at around 6:00 P.M. After that, she never saw complainant return to their house. She went to sleep at 7:00 P.M. beside her father, mother and siblings. On February 12, 1996, she woke up at around 4:00 A.M. to prepare for school, but she did not see complainant at their house. She left for school at 5:30 A.M.[10]

On June 3, 1997, the trial court rendered judgment[11] finding appellant guilty as charged, disposing thus -

WHEREFORE, in view of the foregoing, the Court finds accused Alberto Malacura y Maligro guilty beyond reasonable doubt of the crime of Rape and sentences him to suffer the penalty of reclusion perpetua which is twenty (20) years and one (1) day to forty (40) years and to pay Mary Rose Alonzo the amount of P50,000.00 as moral damages, P25,000.00 as exemplary damages and cost of the suit.

SO ORDERED.

Appellant now contends that the trial court gravely erred in -[12]

... CONVICTING THE ACCUSED BY GIVING FULL CREDENCE TO THE TESTIMONY GIVEN BY THE PRIVATE COMPLAINANT MARY ROSE ALONZO DESPITE ITS GLARING INCONSISTENCIES, RECANTATIONS, UNCERTAINTIES, SURMISES, SUSPICIONS, GUESSES AND CONTRADICTIONS.

... NOT DISMISSING THE CASE AS THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

In support of the first assignment of error, appellant points out material inconsistencies between complainant's sworn statement and her testimony on direct examination during the bail hearings, and her subsequent inconsistencies in the course of cross-examination. Complainant wavered in her testimony as to what happened after she drank the gin offered by appellant: did she fall on the sofa or on the floor? Did she join the group again for another three rounds of drinking? According to the defense, complainant was unclear whether she was conscious or not when the alleged offense took place. Further, complainant allegedly vacillated on whether appellant threatened her to keep quiet about the incident, or merely looked at her when she regained consciousness.

In support of the second assignment of error, appellant insists that the medical findings show that complainant's hymen was intact, and she sustained no genital or extra-genital injuries. Therefore, appellant argues, the medical

findings raise doubt as to the element of carnal knowledge. Further, the absence of an outcry from complainant and her delay in reporting the incident detract from the truthfulness of her charge.

We note, at the outset, that a medical examination of the victim, as well as the medical certificate, is merely corroborative in character and is not an indispensable element in rape.[13] When the victim has been rendered unconscious, obviously, she cannot raise an outcry while she is being raped. Delay in reporting a rape incident, when properly explained, does not affect the credibility of the victim.[14] Lastly, the Court has taken judicial notice that the crime of rape can be committed in any place for lust is no respecter of time or place.[15]

For the State, the Office of the Solicitor-General recommends in its brief the acquittal of appellant, primarily on the ground that the prosecution failed to positively identify appellant as the perpetrator of the rape. Hence, in our view, the crucial issue in this case is whether the prosecution has presented sufficient evidence to prove beyond reasonable doubt that the offense of rape was committed by the appellant.

In the review of rape cases, we consider as guiding principles the following: (1) to accuse a man of rape is easy, but it is difficult for the accused to disprove it, though he may be innocent; (2) since only two persons are usually involved in the crime of rape, the testimony of complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and not be allowed to draw strength from the weakness of the evidence for the defense.[16] While it may be true that in a rape case the lone testimony of the victim could suffice to sustain a conviction, such testimony must meet the test of credibility, which means that the testimony should not only come from the mouth of a credible witness, it should likewise be credible and reasonable in itself, that is to say, candid, straightforward, and in accord with human experience.[17]

On direct examination, complainant testified that when she came out of the bathroom, appellant had handed her a glass of gin. After drinking it, she felt dizzy and fell down on the sofa. Even in her weakened state, she managed to see the face of appellant who was on top of her, and she felt him having sexual intercourse with her, viz:[18]

PROSECUTOR NEPTALI ALIPOSA TO COMPLAINANT

Q: What happened to you next when you felt dizzy?

A: I felt very weak and I can no longer think what was placed in the glass which I drank.

Q: What happened next when you felt dizzy?

A: I fell down to the floor of the house, sir. (witness demonstrating a leaning position)

Q: What did the accused do to you when you lie down on the floor?

A: I fell on the sofa, sir.

Q: How long is the sofa where you laid yourself?

A: It was long, sir.

Q: While on the sofa what did the accused do to you?

A: I saw Alberto on top of me. I saw his face, sir.

Q: What was he doing on top of you?

A: (witness crying and telling something unintelligibly)

Q: What was that that Malacura was doing to you?

A: "Niyayari niya po ako", sir.

Q: When you say `niyayari niya po ako" does it mean that the accused was having sexual intercourse with you?

A: Yes, sir.

During the cross-examination, however, complainant declared that after going to the bathroom, she merely rejoined appellant and Merino for three more rounds before she felt dizzy. After she fell on the floor, she felt someone having sexual intercourse with her, and she saw the shadow of appellant's face, viz:[19]

ATTY. BERNARDO ATIENZA TO COMPLAINANT

Q:

After coming from the bathroom, did you drink again?

A:

Yes, sir.

Q:

How much did you drink?

A:

After three rounds, sir.

Q:

And after three rounds, you continued to converse with the people around you.

A:

I suddenly felt dizzy, sir.

Q:

What do you mean by dizzy, you mean you lost your consciousness?

A:

Yes sir, it seems that my mind went blank.

Q:

And at that time the wife of the accused was still there near you?

A:

I could no longer recall if the wife of the accused was still around, sir.

Q:

How about Mang Luding, can you still remember if he was still there or you cannot remember?

A:

Yes, sir.

Q:

You said also that "niyari ka" - (that accused abused you)

A:

Yes, sir, because I saw the shadow of his face.

Q:

In other words, you were not unconscious at that time?

A:

I lost consciousness, sir, in fact my mind went blank and I was no longer in my real self.

Upon further cross-examination, however, complainant said that after drinking the glass of gin, she immediately lost consciousness, and woke up the following morning, viz:[20]

ATTY. FRANCISCO CHAVEZ TO COMPLAINANT

Q: Did you fall down on the same spot?

A: Yes, sir I fell down exactly at the same spot where the glass of gin was handed to me.

Q: When you fell down you lost consciousness completely, correct?

A: Yes, sir, but I just felt dizzy.

x x x

Q: When you woke up it was already 5:00 o'clock in the morning, correct?

A: Yes, sir I was already on the sala set.

Subsequently, complainant testified that she was conscious enough to see the shadow of the person who was pulling her shorts down, but she did not know who was that person, viz:[21]

ATTY. FRANCISCO CHAVEZ TO WITNESS

Q: You also did not see the face of the person on top of you because it was dark?

A: I can see (aninag), the shadow of his face because I tried my very best to open up my eyes and I saw his face in front of me, sir.

Q: You just stated about a minute ago somebody was pulling your shorts down but you cannot see who that person was?

A: Yes, sir I do not know who was removing my shorts but I saw him in front of me.

Q: Did you or did you not see the face of the person who pulled your shorts down?

A: I saw the shadow of that person, sir.

Q: Only the shadow?

A: Yes, sir.

Noteworthy, the above-mentioned inconsistencies pertain to the identity of the person committing the crime itself. Such discrepancies in the testimony of complainant seriously impair her credibility. As enunciated in *People v. Galera*, 280 SCRA 492 (1997):

A significant, if not perhaps the primordial concern in the criminal prosecution of an accused is the correct identification of the author of the crime and the other, of course, would be the actuality of the commission of the offense in which he is shown to be responsible or has participated. The guilt of the accused must be proved

by the State beyond reasonable doubt on the strength of its evidence and without solace from the weakness of the defense. Thus, even if certain inculpatory facts appear imputable to the offender, the same are inconsequential if, in the first place, the prosecution fails to discharge the onus on his identity and culpability. The constitutional presumption of innocence dictates that it is for the prosecution to demonstrate the guilt, and for the indicttee to establish innocence." [22]

Moreover, other inconsistencies pertaining to the events before and after the alleged rape further taint the credibility of complainant.

First, complainant testified that on February 11, 1996, at around 3:00 P.M. while she was on her way to the store to buy merienda, appellant invited her to join their drinking session. [23] However, upon further cross-examination, complainant admitted that as early as 9:30 A.M., she and her mother already went to the house of appellant to watch television, albeit uninvited. [24]

Second, complainant stated on direct examination that appellant's wife was around while the group was having a drinking session. [25] On cross-examination, she said that appellant's wife was not around during the drinking session. [26] But upon further cross, she stated that she left appellant's house at 12:30 P.M. and came back at around 3:00 P.M., and appellant's wife was present at that time. [27]

Third, complainant, on direct examination, testified that she woke up the following day at around 5:00 A.M. and appellant threatened her not to report the incident or he would kill her and something bad would happen to her family. [28] On cross-examination, however, she said that when appellant saw her regain consciousness early in the morning, he merely looked at her and then she went out of the house alone. [29] Yet, later, she said that when she woke up, she did not know where accused was at that time. [30] Further, it is also against human experience for the wife and children not to have known of complainant's presence in the one-bedroom house had she really spent the night there unconscious on the sofa. As appellant's daughter testified, she even woke up at around 4:30 A.M. to prepare for school and complainant was not in their house.

Fourth, complainant initially admitted that after regaining consciousness she could not recall where the appellant was situated. [31] Then, she categorically stated that appellant was inside his bedroom when she woke up. [32] Later on, she declared that she did not know the whereabouts of appellant when she regained consciousness. [33]

We have repeatedly stressed that the resolution of a rape case often hinges on the credibility of the victim. If her testimony does not meet the test of credibility nor clearly establish the identity of the accused as the perpetrator of the crime, the acquittal of the latter is inevitable. [34]

A judgment of conviction demands the positive identification of the accused as the perpetrator of the crime and the same must be proved beyond reasonable doubt. Unless the identity of the culprit is established beyond reasonable doubt, the charge against the accused must be dismissed on the ground that the constitutional presumption of innocence has not been overcome. [35] Hence, we are constrained to acquit appellant for failure of the prosecution to establish the guilt of appellant with moral certainty.

WHEREFORE, the appealed Decision is REVERSED and SET ASIDE. Appellant ALBERTO MALACURA is hereby ACQUITTED for lack of sufficient evidence to convict him of the offense charged beyond reasonable doubt. The Director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless he is being lawfully held for another cause. Costs de officio.

SO ORDERED.

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

- [1] Rollo, pp. 104-105.
- [2] Id. at 106.
- [3] Records, p. 1.
- [4] Id. at 21.
- [5] TSN, November 11, 1996, pp. 4-7.
- [6] TSN, May 14, 1996, pp. 5-11; Medico-Legal Report, Exh. "A," Records, p. 51.
- [7] TSN, May 28, 1996, pp. 8-16; Medical Report, Records, p. 54.
- [8] TSN, December 16, 1996, pp. 5-13, 24-34.
- [9] TSN, January 14, 1997, pp. 5-12.
- [10] TSN, January 16, 1997, pp. 6-22.
- [11] Records, pp. 426-432.
- [12] Rollo, p. 30.
- [13] *People v. Celis*, 317 SCRA 79, 95 (1999).
- [14] *People v. Batoon*, 317 SCRA 545, 554 (1999).
- [15] Id. at 555.
- [16] *People v. Aguinaldo*, 316 SCRA 819, 829 (1999).
- [17] *People v. Torion*, 307 SCRA 169, 175-176 (1999).
- [18] TSN, May 14, 1996, pp. 15-16.
- [19] TSN, May 21, 1996, pp. 6-7.
- [20] TSN, November 19, 1996, p. 25.
- [21] TSN, December 5, 1996, p. 11.

[22] 280 SCRA 492, 504-505 (1997).

- [23] TSN, May 14, 1996, p. 20; TSN, May 21, 1996, p. 4.
- [24] TSN, November 19, 1996, p. 9.
- [25] TSN, May 14, 1996, p. 21.
- [26] TSN, November 19, 1996, p. 28.
- [27] TSN, December 5, 1996, pp. 6-7, 16.
- [28] TSN, May 14, 1996, p. 16, TSN December 5, 1996, p. 9.

[29] TSN, May 21, 1996, p. 11.

[30] Id. at 21.

[31] Id. at 16.

[32] Id. at 19

[33] Id. at 21

[34] People v. Ibay, 312 SCRA 153, 155 (1999).

[35] People v. Fontanilla, 199 SCRA 897, 904 (1991).

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