PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUIS ERICK CLEMENTE Y QUINTOS, ACCUSED-APPELLANT.

G.R. No. 130202. October 13, 1999

Ponente: BUENA, J.

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BUENA, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Quezon City, Branch 79, in Criminal Case No. Q-95-60926 finding accused-appellant LUIS ERICK CLEMENTE guilty of the crime of Rape committed against private complainant RASSEL ENRIQUEZ, and sentencing him to suffer the penalty of reclusion perpetua and to pay the sum of P50,000.00 as moral damages.

The criminal charge[2] for rape which was filed against accused-appellant on April 4, 1995 reads:

> "The undersigned accuses LUIS ERICK CLEMENTE Y QUINTOS of the crime of Rape, committed as follows:
>
> "That on or about the 24th day of March 1995, in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there willfully, unlawfully and feloniously dragging her inside the room of the house at Kaunlaran Extension, Kalayaan E, Barangay Batasan Hills, and at knife point 'Biente nueve' undressed her and thereafter have carnal knowledge with the undersigned complainant against her will and without her consent.
>
> "CONTRARY TO LAW."

Upon his arraignment, accused-appellant pleaded not guilty. Trial thereafter ensued, with the prosecution presenting private complainant, her mother, the medico-legal officer who conducted the medical examination, and the police officer who "invited" accused-appellant to the police station.

The prosecution's evidence, based on the testimony of private complainant, reveals that on March 23, 1995, at around 7:00 p.m. until 1:00 a.m. of the following day, private complainant sold "balut" in front of Lanai Beerhouse located along Commonwealth Avenue, Barangay Holy Spirit, Quezon City. Around 1:00 a.m. of March 24, 1995, private complainant started to walk towards the house of Lani Villegas where she was then staying. On the way, accused-appellant suddenly approached her, poked a pointed object at her, and told her to keep quiet because Lani Villegas was approaching. Upon reaching them, Lani Villegas asked private complainant if there was any problem but the latter replied in the negative as she was afraid of the pointed object poked at her. Lani Villegas was then about a meter away. After looking at the face of accused-appellant, Lani Villegas entered her house, leaving private complainant and accused-appellant outside. Private complainant further testified that accused-appellant then brought her to his friend, Joel Oliger's house at Kalayaan Street, about 150 meters away, still poking the pointed object at her while they were walking. Upon reaching the said house, accused-appellant talked with Joel Oliger secretly, after which the latter left them alone in the house. Inside an unlighted room, accused-appellant forced her to remove her clothes and underwear while poking the pointed object at her,[3] and forcibly kissed her breast. Accused-appellant then told her to spread her legs, placed himself on top of her, and

inserted his penis into her vagina.[4] Private complainant felt pain when accused-appellant inserted his penis into her vagina. Accused-appellant continuously pumped against her for quite a long time. Afterwards, he pulled her up, pushed her back against the wall and again inserted his penis into her vagina. Accused-appellant then suggested "[t]rip, trip lang. Kung gusto mo tatlo tayo dito sa kuwarto," but private complainant rejected his suggestion. They both dressed up and went out of the house, with the accused-appellant holding her hands.[5]

Private complainant and accused-appellant walked towards the street. Upon reaching the street, private complainant told him that she wanted to go home but he did not reply. She told him some story, and when she had the opportunity to do so, crossed the street while accused-appellant remained seated on a bench. She proceeded to the house of Lani Villegas and after telling the latter what happened to her, they went to the house of a neighbor who was a policeman. Private complainant told him about the incident, and afterwards went to the police station where she likewise reported the incident. Later, private complainant was examined by a medico-legal officer.[6]

On cross-examination, private complainant clarified that in the early morning when she was raped, she left Lanai Beerhouse with Lani Villegas but they separated at the corner of an alley. Private complainant walked ahead of Lani Villegas. About two (2) minutes later,[7] accused-appellant suddenly approached her and poked a knife at her. She did not ask for help from Lani Villegas who advanced towards them about five (5) minutes after accused-appellant accosted her, nor did she run towards Lani Villegas because accused-appellant told her to keep quiet, held her on the right shoulder, and poked a pointed object at her left side.[8] Private complainant did not shout nor did she run for help even though she was near Lani Villegas' house at the time she was accosted by accused-appellant because she was afraid and accused-appellant was very near her. Neither did she shout for help even when they met some people along the way to the house of Joel Oliger. It took them about thirty (30) minutes to reach the said house[9] and while walking, they had a conversation.[10] She further testified that it was accused-appellant who removed her clothes while poking a pointed object at her, contrary to her testimony on direct examination that she was the one who removed her clothes.[11]

Still on cross-examination, private complainant testified that the small room where she was raped was in a squatter's area, and the rooms were located near each other. She did not shout for help because a knife was poked at her. However, she later admitted that when accused-appellant forced her to lie down, the former held both of her shoulders and the knife was no longer poked at her, but still private complainant did not shout for help. She did not kick or box him but merely lay down. After he kissed her mouth, breast, and the other parts of her body, he inserted his penis into her vagina and pumped against her for fifteen (15) minutes but still she did not make any resistance. Thereafter, they both stood and while standing, he again inserted his penis into her vagina, but still she did not shout for help.[12]

On further cross-examination, private complainant testified that when they left the house where she was raped, they walked towards the street, estimated to be a distance of about 250 meters, and while walking, accused-appellant talked with her. Upon reaching the street, accused-appellant seated himself while private complainant remained standing and continued to talk with the former. Accused-appellant did not hold her or poke a knife at her. When she had the opportunity to free herself, she crossed the street and ran away. The following day, private complainant claimed that she went to the police station and executed an affidavit. Confronted with the said affidavit dated March 28, 1995, she admitted that she could no longer remember when she executed it. While she first claimed that accused-appellant did not mention his name, age and residence during the incident, when confronted with her affidavit, she admitted that at the time they were walking, she asked the name, age and address of accused-appellant.[13]

Dr. Ma. Cristina B. Freyra, the medico-legal officer of the Central Crime Laboratory Service, Station 10, Quezon City who conducted the medical examination on private complainant on March 24, 1995,[14] found private

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complainant to be in a “non-virgin state physically” and that there were “no external signs of recent application of any form of trauma at the time of examination.”[15] Likewise, she found a “deep, healed laceration at 6:00 o’clock” and negative for the presence of spermatozoa.[16]

In his defense, accused-appellant denied the charge hurled against him, claiming that he had sexual intercourse with private complainant but he did not use force, violence or threats against her in consummating the act.

According to accused-appellant, on March 23, 1995, around 10:00 p.m., he was in the house of his friend, Joel Oliger at Tribu St., Kalayaan, Barangay Batasan Hills, Quezon City because he had a problem with his wife. He slept from 9:30 p.m. until 2:05 a.m. of the following day. When he woke up, he asked permission from Joel Oliger to go out because he was hungry. He ate at the Filinvest Burger Machine. While walking back towards Joel Oliger’s house, he passed by Lanai Beerhouse where he saw private complainant coming out of the said beerhouse. He greeted her and they introduced themselves to each other. They talked for about twenty (20) minutes and walked along a narrow street while holding each other’s hands. Lani Villegas saw them and asked private complainant what they were doing. After private complainant replied “none,” Lani Villegas went inside her house. Accused-appellant and private complainant continued to talk, then, the latter suggested “let’s go to a place where no one will disturb us.” Accused-appellant crossed the street and went ahead to a waiting shed to wait for private complainant who was waiting for Lani Villegas to close the door of her house so she could follow him. Thereafter, private complainant ran towards him. They continued to talk and before long accused-appellant placed his hand on private complainant’s shoulder and told her they were going to a friend’s house. While walking, they conversed and embraced each other. Upon reaching his friend’s house, accused-appellant asked his friend if he could use the room and the latter agreed.[17]

Accused-appellant continued to testify that when they were alone in the room and he was lying on the bed, private complainant approached him, massaged his forehead, held his nape and kissed his lips. Private complainant then moved away to remove her clothes and accused-appellant did the same. Private complainant kissed him all over his body, removed his briefs and her panty, sat on top of him, and moved her body up and down while holding his breast. They changed positions and accused-appellant went on top of her, kissed her cheek and body, inserted his penis into her vagina while private complainant embraced him tightly. After the sexual intercourse which lasted for about 35 minutes, they rested for 15 minutes. Afterwards, Joel Oliger knocked at the door and asked if they were already finished. Accused-appellant told him to wait for a while, then, private complainant dressed up.[18] Thereafter, accused-appellant accompanied private complainant to a place near Lani Villegas’ house while they were holding each other’s arm. Several days later, he was brought to the precinct and charged for rape.[19]

On December 11, 1996, the trial court rendered a decision finding accused-appellant guilty of the crime of rape and imposed the penalty of reclusion perpetua and P50,000.00 as moral damages.

In this appeal, accused-appellant raises a lone assignment of error:

> THE LOWER COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF HEREIN ACCUSED-APPELLANT OF THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In his Appellant’s Brief, accused-appellant argues that the prosecution failed to prove his guilt beyond reasonable doubt. Accused-appellant asserts that “[private] complainant’s story is highly incredible to warrant belief and consideration.”[20] First, accused-appellant declares as “highly unbelievable” private complainant’s contention that when she was on her way to Lani Villegas’ house, accused-appellant suddenly poked a pointed object at the right side of her waistline. Accused-appellant points out that when Lani Villegas approached them and asked private complainant if there was a problem, “xxx [i]nstead of making an outcry or at least send an implied

message to Lani that she [private complainant] was in danger, she simply said 'none.' Granting [that] Lani Villegas failed to notice that a knife was then pointed at the [private] complainant's waistline, at least Lani would be alarmed by the presence of herein accused – a total stranger, talking to the [private] complainant in that ungodly hour. It would be unnatural for Lani Villegas, a "kumadre" of complainant's mother, to enter the house, closed (sic) the door and allow [private] complainant to stay alone outside with a total stranger. xxx."[21] Second, accused-appellant insists that "...nothing in the record would suggest that she [private complainant] offered sufficient resistance to preserve her honor and virtue."[22] According to accused-appellant, "...[private] complainant admitted that while she was being raped, her mouth was not covered[23] and the knife was not pointed at her. Nevertheless, she neither shouted for help nor made an outcry inorder that she may be heard by the occupants in the adjoining rooms. xxx."[24] Accused-appellant opines that private complainant's "...conduct clearly runs counter to the natural reaction of an outraged maiden despoiled of her honor."[25] Third, accused-appellant contends that the medico-legal report belies private complainant's claim that she was raped. According to the medico-legal report, private complainant was in a non-virgin physical state and no signs of any form of trauma were found at the time she was examined. Lastly, accused-appellant submits that "[i]t defies human nature that accused would introduce himself to his supposed victim regarding his identity," citing private complainant's admission that she asked the name, age and address of accused-appellant while they were walking, thus:

> "xxx xxx.
>
> "ATTY. VENTURANZA:
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> "Q I will read to you question no. 16 – Sino ang taong iyong inirereklamo? Sagot – Si Erick Clemente po, 23 taong gulang, binata at nakatira sa Kalayaan C Brgy. Batasan Hills, Quezon City. Now Miss Witness, you said a while ago that he never mentioned his name, his address, his age, how come you were able to know all of these informations (sic) even before he was arrested?
>
> (Witness is smiling while answering)
>
> "Atty. Venturanza:
>
> I would like to make it of record, Your Honor that the time the witness was answering she was smiling.
>
> "WITNESS:
>
> "A I remember that at the time we were walking I asked the name of the accused, his age and address, sir." (TSN, October 17, 1995, pp. 13-14; underscoring ours)[26]

Accused-appellant asserts that "[i]nevitably, when the evidence is inconsistent with human experience the same cannot be considered a sufficient basis upon which to rest a judgment of conviction. Evidence to be believed must not only proceed from the mouth of a credible witness, but it must be credible in itself – such as the common experience and observation of mankind can approve as probable under the circumstances. (citation omitted)"[27] and prays for his acquittal for failure of the prosecution to overcome the constitutional presumption of innocence.

In its Manifestation and Motion in lieu of Brief, the Office of the Solicitor General agrees with accused-appellant and maintains that the trial court committed an error in its Judgment and, accordingly, prays that we reverse and set aside the said Judgment, and acquit accused-appellant of the crime charged.

The appeal is impressed with merit.

In deciding this appeal, we are guided by the legal precept that in any criminal prosecution, the State must rely on the strength of its own evidence and not on the weakness of the evidence of the defense; and we are mindful of the

following settled principles: (1) an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where 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.[28]

In the case at bar, the prosecution failed to meet the standard necessary to secure conviction. In rape cases alleged to have been committed by force, it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused-appellant upon his victim to achieve his end. Failure to do so is fatal to its cause.[29] Private complainant's actuation before, during and after the alleged rape fails to convince us that she was raped against her will. We agree with the Solicitor General that private complainant's "...testimony inexorably shows that private complainant obviously consented to the sexual act which was done not only once but twice. Glaring too is the fact that by her own admission that her mouth was not covered and that accused-appellant was not holding or poking the pointed object at her while doing the sexual act, she certainly had every opportunity to make an outcry against the alleged rapist or shout for help had she wanted to. But she did not. xxx." (emphasis supplied)[30] Thus:

"ATTY. VENTURANZA:

"Q Now, Miss witness the house that (sic) the accused brought you it was a small room, is that correct?

"RASSELL ENRIQUEZ:

"A Yes, sir.

"Q But it is a squatter's area?

"A Yes, sir.

"Q And the rooms are located very near each other?

"A Yes, sir.

"Q And there are a lot of rooms or there are many rooms there in that squatter's area?

"A Two or three rooms.

"Q The other are houses?

"A Yes, sir.

"Q But all of them are built near each other?

"A Yes, sir.

"Q Now, during the time that you were allegedly being raped, you[r] mouth was not covered?

"A No, sir.

"Q But you did not shout?

"A No, sir.

"xxx xxx xxx

"Q So if you want to shout you can still be heard by the people around you?

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"A If I shout I can be heard.

"Q But you did not shout?

"A No, sir.

"Q Now, you said that the accused held you up by your shoulders and forced you to lie down?

"A Yes, sir.

"xxx xxx xxx

"Q You are telling us that it was only one hand that held your two shoulders?

"A No, sir.

"Q So his two hands were holding both of your shoulders?

"A Yes, sir.

"Q And after both of your shoulder[s] were being held up, he forced you to lie down?

"A Yes, sir.

"Q Now, Miss witness, since the accused were (sic) holding your shoulders, no pointing (sic) object was pointed at you?

"A None, sir.

"Q Since nothing being pointed (sic), you still did not shout for help?

"A No, sir.

"Q You did not kick him?

"A No, sir.

"Q You did not box him?

"A No, sir.

"Q All you did was to lie down?

"A Yes, sir.

"xxx xxx xxx

"Q Miss witness you said that his penis was immediately inserted to your vagina but you did not resist the accused when he was inserting his penis?

"A No, sir.

"Q Now, how long did the pumping motion took (sic) effect?

"A 15 minutes, sir.

"Q And during that time for that 15 minutes your mouth was covered?

"A No, sir.

"Q For that 15 minutes you did not resist?

"A No more, sir.

"Q For that 15 minutes you did not give any fight to the accused?

"A No, sir.

"Q And in fact the accused never inflicted any physical pain at you?

"A No, sir.

"xxx xxx xxx.

"Q So, after he finished with you both of you stood up?

"A Yes, sir.

"Q And when you both stood up he pushed you near the wall while standing?

"A Yes, sir.

"Q And while your back was against the wall he was holding both of your hands?

"A Yes, sir.

"Q And you said in your affidavit that while you were standing up he again inserted his penis to your vagina?

"A Yes, sir.

"xxx xxx xxx.

"Q During that time that you were standing up, your mouth was not again covered?

"A No, sir.

"Q So you can shout during that time?

"A Yes, sir." (emphasis supplied)[31]

As we held in People vs. Salem[32] and aptly cited by the Solicitor General: "It may be argued that intimidation is very subjective and must be viewed in the 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. Still, it is improbable for a victim of rape not to make an outcry against an unarmed rapist when she had every opportunity to do so. xxx. Although we do not in any way expect Mirasol [private complainant] to resist unto death, no woman would meekly give into a sexual intruder were her life not in serious jeopardy. xxx."[33]

We quote with favor the Solicitor General's observation that "...private complainant did not even tell her friend Lani Villegas, or, at least, give her a hint that she was in danger. On the other hand, it was simply implausible for Lani Villegas to leave her outside with a stranger at such time of the day without being suspicious. Nor was there a testimony that accused-appellant warned her not to tell anybody before, during and after the sexual acts. In fact, she was simply allowed to go by accused-appellant."[34]

Everything considered, the Court is not convinced beyond reasonable doubt that accused-appellant committed the crime of rape against private complainant.

WHEREFORE, for failure of the prosecution to establish the guilt of the accused-appellant for the crime of rape as charged beyond reasonable doubt, the decision of the trial court in Criminal Case No. 95-60926 is REVERSED and accused-appellant LUIS ERICK CLEMENTE y QUINTOS is ACQUITTED and his immediate release is

hereby ordered unless there are other legal grounds for his continued detention.

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.

Mendoza, (Acting Chairman), and Quisumbing, JJ., concur.

Bellosillo, (Chairman), J., on official business.

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[1] Penned by Judge Godofredo L. Legaspi.

[2] Rollo, p. 8.

[3] TSN, August 1, 1995, p. 3.

[4] TSN, July 12, 1995, pp. 4-17.

[5] TSN, August 1, 1995, pp. 2-7.

[6] Ibid., at pp. 8-12.

[7] TSN, September 13, 1995, p. 2.

[8] On direct examination, private complainant testified that the pointed object was poked at the right side of her waistline.

[9] TSN, September 13, 1995, p. 3.

[10] Ibid., at p. 7.

[11] TSN, September 6, 1995, pp. 8-15.

[12] TSN, September 13, 1995, pp. 9-19.

[13] TSN, October 17, 1995, pp. 6-14.

[14] Medico-legal Report No. M-0446-95, Records, p. 8.

[15] Ibid.

[16] Ibid.

[17] TSN, December 6, 1995, pp. 3-13.

[18] TSN, December 13, 1995, pp. 4-11.

[19] TSN, April 22, 1996, pp. 4-6.

[20] Rollo, p. 90.

[21] Ibid., at p. 91.

[22] Ibid.

[23] TSN, September 13, 1995, pp. 10, 19.

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[24] Rollo, p. 92.

[25] Ibid.

[26] Ibid., at p. 93.

[27] Ibid., at p. 94.

[28] People vs. Abrecinoz, 281 SCRA 59, 71 (1997).

[29] People vs. Subido, 253 SCRA 196, 205 (1996).

[30] Rollo, pp. 145-146.

[31] TSN, September 13, 1995, pp. 9-19.

[32] 280 SCRA 841 (1997).

[33] 280 SCRA 841, 848 (1997).

[34] Rollo, p. 147.

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