

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SEGUNDO CANO, ACCUSED-APPELLANT.*G.R. No. 130631. August 30, 2000*

Ponente: PUNO, J.

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Segundo Cano appeals his conviction for two counts of raped[1] he committed against his daughter, Juanita Cano, on September 14 and 16, 1985. Juanita was only fifteen (15) years old then. Two informations both dated July 17, 1996, similarly worded except for the date of the commission of the crime, aver:

"That on or about (date of commission), in Barangay Cabanbanan, Balatan, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence, threat and intimidation, and with the use of a bolo, did then and there willfully, unlawfully and feloniously have carnal knowledge with one Juanita Cano his own minor daughter with age 15 years, but this present is already Juanita Cano Quingquing, against her (sic) daughter's will and without her consent, to the latter's damage and prejudice in such amount as may be proven in court."

The facts show that on September 14, 1985, Juanita was left alone with her father in their house at Sitio Manghit, Cabanbanan, Balatan, Camarines Sur. At about 7:00 p.m., while preparing dinner, her father poked a bolo at her and started removing her blouse, shorts and panty. He then slid his pants below his knees and held Juanita with his hands. While in a standing position, he pushed his buttocks toward her private organ. She kept pushing her father away but he still consummated the intercourse.[2] The coitus lasted for five (5) minutes. It left a throbbing pain in her organ. After copulating with his daughter, the accused warned her not to reveal the incident to anyone lest she will be killed.[3] His threat terrified Juanita.

At about 8:30 p.m., her mother and siblings arrived. Her father was not at home then. Despite her father's threats, Juanita told her mother that she was raped. Her mother did not believe her. Instead, she struck her with a piece of wood.[4]

The accused again abused Juanita on September 16, 1985. At about 8:00 a.m., he sent her to gather vegetables at their farm, one to two kilometers[5] away from their house. While she was gathering "gabi" leaves, the accused came and poked a bolo, locally known as "ginunting", at the right side of her body. He dragged her to a stony portion of their land where she was made to lie down. Her dress and panty were torn when he forcibly removed them. He held one of her shoulders and his bolo with his other hand. He straddled her and executed push and pull movements. He penetrated Juanita. After the sexual abuse, Juanita ran home and found no one in their house. To avoid a repetition of her fate in the hands of her father, she transferred to San Nicolas, Iriga City where she served as a housemaid.[6] Since then, Juanita neither returned nor communicated with her family. She married Andres Quingquing on October 1, 1986.[7]

On April 6, 1996, Juanita went to the public market of Balatan. She learned that her sister-in-law, Belen Camiro-Cano,[8] filed rape charges against the accused but withdrew them later.[9] This prompted her to give a

statement,[10] to SPO1 Romeo Junio of the Balatan Police Station about the rapes committed against her by the accused a decade and a year ago. On April 10, 1996, she filed two complaints for rape.[11]

The rape of Juanita on September 16, 1985 was corroborated by Claudio Sinfuego, an old acquaintance of the Canos.[12] He testified that on that fateful day, he went to the land of Candido Junio to buy bananas. The land of Candido adjoins the farm of the Canos. At about 8:00 a.m., Claudio saw Juanita gathering "gabi" leaves. Later, the accused arrived and pointed a bolo at Juanita. He dragged her to a nearby rock. Juanita tried but failed to escape from the clutches of the accused. He forced her down to the ground and went on top of her. Juanita cried and struggled in vain. The accused's lust died down only after he relished two minutes of sexual abuse.[13] Claudio and Candido stood frozen while the accused ravished his own daughter. Juanita and the accused did not see the duo.[14] Juanita left after the accused finished the coitus. That was the last time Claudio saw Juanita. He met her again only in 1996 when she filed the charges of rape.[15]

Sotera Junio, wife of Candido Junio[16] and a barangay kagawad of Cabanbanan, testified that her husband told her about the rape of Juanita on September 16, 1985. On the same day, between 10:30 and 11:00 a.m., she met a crying Juanita on a trail near their house. She carried clothes in a plastic bag. Although Sotera knew of the rape incident, she still asked Juanita why she was crying. Juanita refused to answer but after much prodding, she revealed that her father raped her on September 14 and earlier that day. She also told Sotera that she was going to her uncle Bonifacio in Iriga City. Sotera offered her help in filing charges against the accused. Juanita could not make up her mind that time.[17]

On April 6, 1996, Sotera met Juanita again at the public market of Balatan. Juanita learned that the accused was in jail and she wanted him to remain behind bars for abusing her in the past. She sought the help of Sotera who accompanied her to the police station.[18]

The accused denied the charges against him. He testified that Juanita was employed as a housemaid in San Nicolas, Iriga City starting April 1985. She left their home after she graduated from grade six on the same month. She did not return to Balatan. He saw her again on April 1996 after she accused him of rape.

He declared that the cases at bar were filed at the insistence of Sotera and Lolita Dela Cruz. Lolita is the older sister of his wife. She had a score to settle against him as she did not want to pay her debt to him. Also, two of his nieces, Winefreda and Rosana, were brought by Lolita to Manila as housemaids. Winefreda never returned but her salary was collected by Lolita. Rosana was brought by Lolita to Manila when Rosana's mother got sick. Rosana's mother sought his help in finding and bringing them back. He then had a confrontation with Lolita.[19] On the other hand, Sotera got angry with him when he succeeded in buying the land of Porfirio Ardoro in Cabanbanan. The land adjoins that of Sotera. She resented the sale.[20]

Belen Camiro-Cano testified that the rape charge she filed against the accused was false. She stated that the case was filed only to pressure her husband, Antonio Cano, who was then living in Manila, to reconcile with her.[21] Antonio corroborated her testimony.

Antonio, Elena and Purificacion Cano declared that Juanita left their house after she finished grade six in April 1985. They said that Juanita returned only when she filed the charges against the accused. Antonio added that Juanita even asked permission from her mother to work in San Nicolas, Iriga City. She left when Antonio was only eleven (11) years old.

Elena Cano, the fifth child of the accused, testified that she was only about four and a half years old when Juanita left their house. She saw Juanita again only on April 2 or 3, 1996 at the house of Sotera.[22] She was with Lolita. Elena recounted that Juanita, Sotera and Lolita tried to convince her to file rape charges against the accused but

she refused.[23]

Purificacion Cano, mother of Juanita, also took the side of the accused. She testified that after she sent off Juanita in April 1995, they met again only on April 1996 when she and Elena were asked by Sotera to come to her house at Barangay Siramag.[24] During the intervening period, Juanita did not visit them as she resented being told of her wrongdoings. She was stubborn and always resisted the authority of her parents.[25] Purificacion opined that the cases at bar were filed at the instigation of Lolita.

On rebuttal, Sotera denied that she instigated Juanita to file the cases at bar. She confirmed that Purificacion and Elena went to her house on April 6, 1996 because they asked her to be a witness to the sale of the land of the accused to Dominador Todiño. She also denied that she tried to convince Elena to charge the accused with rape. Sotera said that since Elena was her goddaughter, she merely asked her if she was also molested by her father. That time, the accused was already in jail because of the case filed by Belen.[26]

On sur-rebuttal, Purificacion reiterated that Elena told her that Sotera tried to convince Elena to file a rape case against the accused. When she failed, she tried to persuade Elena just to be a witness against him.[27]

On June 25, 1997, the trial court convicted the accused. The dispositive part of the decision states:

“WHEREFORE, premises considered, the Court finds the accused Segundo Cano guilty beyond reasonable doubt of the crime of rape in two counts as charged in the two informations, as principal thereof, without mitigating circumstances to be considered in his favor.”

“Accordingly, in Crim. Case No. IR-4183, the Court imposes upon the accused Segundo Cano the penalty of Reclusion Perpetua with the accessory penalties provided by law, to indemnify Juanita Cano-Quingquing P50,000.00 as moral damages, to pay exemplary damages in the sum of P50,000.00, and to pay the costs.

In Crim. Case No. IR-4184, accused Segundo Cano is sentenced to undergo imprisonment of Reclusion Perpetua with the accessory penalties provided by law, to indemnify Juanita Cano-Quingquing P50,000.00 as moral damages, to pay exemplary damages in the sum of P50,000.00, and to pay the costs.

“xxx xxx xxx”[28]

In assailing the decision of the trial court, the appellant assigns a single error, viz:

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

We affirm the conviction of the appellant.

FIRST. The appellant contends that he could not have raped Juanita on September 14 and 16, 1985 as she already left their house on April 6, 1985. He stressed that her absence was confirmed by Purificacion, Antonio and Elena who were the mother, brother, and sister, respectively, of Juanita.

The appellant's contention is not tenable. As well pointed out in the Brief for the People, the testimonies of Purificacion, Antonio and Elena are not free from bias. Purificacion, the victim's mother, admitted that if she must make a choice between the appellant and her daughter, she would choose the former.[29] In turn, Antonio had selective memory and was inconsistent. He could recall that Juanita left in April 1985 but can not recollect other events that happened that year.[30] He could remember that he went to Manila in February 1996, yet he could not state when he returned to Balatan.[31] He claimed that he was still living with his wife when the latter accused the appellant with rape allegedly committed on October 5, 1995. But he also said that they separated on February 18, 1995.[32] Elena's testimony is also not trustworthy. She admitted she was born on August 27, 1981. She was then barely four years old when Juanita left their house.[33]

In contrast, there is no reason to doubt the testimonies of Sotera and Claudio that Juanita was at Cabanbanan on September 16, 1985. We see no ill motive for them to testify against the appellant.

SECOND. The appellant assails the delay of Juanita in filing the cases at bar. He contends that if they were true, Juanita should have charged him earlier as she had countless opportunities to do so.

The argument is not convincing.

By itself, delay in prosecuting rape is not an indication of fabricated charges.[34] The charge is only rendered doubtful if the delay was unreasonable and unexplained.[35] This is not so in the cases at bar. We agree with the observation of the trial court that:

“To the mind of the Court, the private complainant initially chose to charge the incidents to experience xxx and in her young mind, she believed at the time that to pursue the cases was useless as even her own mother refused to believe her and instead rewarded her with a punishment when she tried to inform her mother about what her father did to her. To her (sic), to leave the parental home was the only means to forget the unpleasant experience and prevent the repetition of the same. But then, the last straw that broke the camel's back, so to speak, was when her sister-in-law, Evelyn Cano (sic) who earlier filed a rape case against her father subsequently pardoned him and caused the dismissal of the case in the MTCC of Balatan, Camarines Sur. It was then that private complainant resolved to initiate the filing of the cases before the MTCC in Balatan, Camarines Sur, and now the instant cases.”[36]

THIRD. The appellant also argues that the testimony of Juanita is incredible. Allegedly, he could not have raped her in a standing position if she was unwilling and kept on resisting. Juanita's testimony did not show that she was pressed against a wall nor was she rendered immobile. He argued that sexual intercourse in a standing position is only possible if Juanita consented.

The appellant also impugned the testimony of Juanita about the rape on September 16, 1985. He maintained that if it was true that he raped Juanita on September 14, 1985, Juanita should have fled from him as this ought to be her natural reaction. He stressed that Juanita even obeyed him when he bid her to gather vegetables. He also assailed as unbelievable the testimony of Claudio Sinfuego whom he claimed to be a rehearsed witness. Claudio recounted that Candido Junio was with him when he witnessed the crime. Yet, they did not lift a finger to prevent the rape.

The appellant's contentions are bereft of merit.

Raping a woman in a standing position may be difficult and uncomfortable, but it is not improbable.[37] In the cases at bar, Juanita was overpowered by the appellant, who, aside from being older and stronger, used a bolo in committing the rape. Juanita was definitely no match for him. The appellant could have very well consummated the rape in a standing or, for that matter, any other position he wanted.

The appellant's protestations that the second rape did not take place is hinged on the argument that Juanita failed to flee from their home and even obeyed his orders despite the first rape. This argument deserves scant consideration. There is no standard reaction to a crime such as rape. Some may shout, some may faint, and some may be shocked into insensibility, while others may openly welcome the intrusion.[38] In the cases at bar, there is nothing unbelievable about the actuations of Juanita. One can not expect her to flee immediately after the first rape for that was committed in the evening of September 14, 1985. Juanita was only fifteen years old and, considering her age, could not be expected to act like a mature woman. Neither was her story rendered suspicious when she obeyed the appellant's order to gather vegetables the next morning. There were no indications that the errand was a prelude to his lecherous desire. It will be noted, however, that Juanita ran away from home after the second rape.

The mere inaction of Claudio and Candido when they witnessed the crime did not render Claudio's testimony unbelievable. Claudio explained that he did not do anything because he was afraid that the appellant might harm Juanita. He also feared for his own life.[39] In any event, what is important is that his testimony contains details that only an eyewitness could know. It also corroborated the testimony of Juanita. The appellant's claim that Claudio was a rehearsed witness is unfounded.

The guilt of the appellant was proven beyond reasonable doubt. The trial court correctly imposed the penalty of reclusion perpetua and the payment of moral damages in the amount of P50,000.00. However, it failed to award civil indemnity which current case law places at P50,000.00.

IN VIEW WHEREOF, the decision of the Regional Trial Court, Iriga City, Branch 37 in Criminal Cases Nos. IR-4183 and IR-4184 is affirmed with the modification that the appellant Segundo Cano shall further pay P50,000.00 as civil indemnity in each case in addition to the moral damages already awarded. The award of exemplary damages in both cases are, however, deleted. Costs against the appellant.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Criminal Cases Nos. IR-4183 and 4184.

[2] TSN, November 4, 1996, pp. 7-11.

[3] Ibid., p. 12.

[4] Id., p. 13.

[5] Per agreement of the parties based on the demonstration of Juanita.

[6] Id., pp. 13-19.

[7] TSN, January 21, 1997, p. 7.

[8] Mistakenly referred to as Evelyn Cano in the TSN.

[9] Ibid., p. 19.

[10] Records, p. 6; Exhibit "1" for the defense.

[11] TSN, November 4, 1996, pp. 20-22.

[12] TSN, October 30, 1996, p. 30.

[13] Ibid., pp. 2-4.

[14] Ibid., p. 6.

[15] Ibid., p. 5.

[16] Candido already passed away before these cases were instituted.

[17] TSN, January 27, 1997, pp. 4-7, 10.

[18] Ibid., pp. 7-9.

[19] TSN, April 15, 1997, pp.3-A-12.

- [20] Ibid., pp. 12-14.
- [21] TSN, February 19, 1997, pp. 3-6.
- [22] Ibid., pp. 8-9.
- [23] TSN, March 10, 1997, pp. 4-10.
- [24] TSN, March 17, 1997, pp. 2-5.
- [25] Ibid., p. 25.
- [26] TSN, June 6, 1997, pp. 3-7.
- [27] TSN, June 18, 1997, pp. 3-4.
- [28] Rollo, pp. 73-74.
- [29] TSN, March 17, 1997, pp. 10-11.
- [30] Rollo, March 3, 1997, pp. 9-10.
- [31] Ibid., p. 12.
- [32] Ibid., p. 6.
- [33] TSN, March 10, 1997, p. 8.
- [34] *People vs. Cabresos*, 244 SCRA 362 (1995).
- [35] See *People vs. Teves*, 246 SCRA 236 (1995).
- [36] Rollo, p. 73.
- [37] See *People vs. Traverro*, 276 SCRA 301 (1997); *People vs. Castro*, 196 SCRA 679 (1991).
- [38] *People vs. Malunes*, 247 SCRA 317 (1995).
- [39] TSN, October 30, 1996, p. 7.

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