PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE CABALIDA, ACCUSED-APPELLANT.

G.R. No. 131828. December 15, 1999

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellant Felipe Cabalida appeals the decision[1] of the Regional Trial Court of Zamboanga City, Branch 17, convicting him of rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the victim in the amount of P50,000.00.[2]

In a sworn-complaint filed by 15-year old Harhada Lackua and subscribed by Assistant Prosecutor Juan G. Florendo, the accused Cabalida, a 47-year old seaweeds farmer was charged with rape, allegedly committed as follows:

> "That on or about May 29, 1995, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being armed with a handgun, by means of violence and intimidation, that is, at gun-point, did then and there wilfully, unlawfully and feloniously, have carnal knowledge of the undersigned HARHADA LACKUA y DANIK, a girl, 15 years of age, against her will.
>
> "CONTRARY TO LAW."[3]

It appears from the evidence that accused Cabalida and the complainant Harhada were neighbors in the fishing village of Mulu-Muluan, Zamboanga City. They are also relatives by affinity. Harhada is the grandniece of accused's wife.

The prosecution, thru Harhada, tried to establish that at about 2:00 p.m. on May 29, 1995, Harhada was in the house of accused Cabalida, watching T.V. She was with Helen, the accused's daughter. While watching T.V., the two fell asleep. When Harhada woke up, she could not find Helen. She was no longer there. She switched off the T.V. and decided to leave the house. On the stairs, she met the accused who just came from the sea. He requested her to buy coffee and sugar. She acceded since she had done chores for him in the past. When she returned to the house and was handing the items to accused, he suddenly grabbed her with both hands and covered her with a blanket. She struggled to free herself and shouted "I do not like, I do not like!" The accused dragged her inside the bedroom and forced her to lie down on the wooden flooring. She continued to resist him and shouted "I do not like, I do not like!" He placed himself on top of her and pressed his knees on her thighs. He then took out a pistol from a pair of pants hanging over her head and pointed it at her. He removed her shortpants and panty and had sexual intercourse with her. She bled, sat at a corner of the room and cried. Accused told her to go home and warned her against telling anyone about the incident. While she was descending the stairs, accused reiterated his threat to kill her. She walked home, wearing only her panty and a "tapis" the accused gave her to wrap herself with. She left behind her shortpants.[4]

Harhada also testified that her mother Hayratul Lebrado was in Manila when this incident happened. She returned home on June 5, 1995 but thought it best not to report the incident. She also continued going to school. After five

(5) months, however, she noticed that her stomach was bulging and she felt something moving inside her. On November 28, 1995, she complained of stomachache to her mother who brought her to Dr. Edwin Cadag. After examination, she was found to be 20-21 weeks pregnant.[5] Her mother asked her who impregnated her but she refused to tell her. She was brought to her aunt in Mampang, Zamboanga City. There, her mother, aunt and uncle forced her to reveal to them who impregnated her. She told them that it was accused Cabalida. She also divulged the threat he made. They went to the Zamboanga City Police Station where Harhada filed a complaint against accused.[6] On March 21, 1996, she gave birth to a baby girl and named her Nurhina.

When Hayratul Lebrado testified, she declared that when she went to Manila, her daughters Harhada and Sarha did not remain in their house but stayed with their aunt who also had a house in Mulu-Muluan. Nobody stayed in their house for her second husband, Alejandro Lebrado (the names Rolando and Lando were also used referring to the same person), temporarily stayed in Talon-talon, Zamboanga City.[7]

For his defense, accused Cabalida denied raping Harhada. He testified that Hayratul and Harhada lived with Alejandro Lebrado, the second husband of Hayratul. Lebrado is not the father of Harhada. He related that in April 1995, Hayratul went to Manila, leaving Harhada, Sarha and Alejandro in the house. On June 5, 1995, Hayratul returned to Zamboanga City. Five (5) days later, she accompanied him to the local telephone station where he placed a long distance call to Manila for his wife regarding a job opportunity in Palawan. His wife told him to go to Manila and from there they would all proceed to Palawan. On June 21, 1995, he and his children, Helen, Ninna and Harris left for Manila. The day before, they held a little celebration to say goodbye to their friends and neighbors. They had many visitors, including Harhada and her sister Sarha. Harhada even helped his daughter Helen pack their belongings. On July 7, 1996, he was surprised to receive a letter from his daughter living in Zamboanga City informing him that someone had accused him of rape. But, she did not tell him his accuser. It was only when his brother-in-law arrived in Palawan that he found out that Harhada was the one who had charged him. Fearing that he would cause embarrassment to his in-laws who were all "hadjis" or Muslims who had gone on pilgrimage to Mecca, Saudi Arabia, he decided to return to Zamboanga City to face the false accusation against him. Upon disembarking from the M/V Super Ferry, he was arrested by the police.

As documentary evidence, the defense presented a copy of the birth certificate of Harhada's daughter declaring Alejandro Lebrado as her father.[8]

Helen Cabalida, the 12-year old daughter of the accused, testified that on May 29, 1995, she was in their house in Mulu-Muluan. That day, her father left very early in the morning to go to the sea and returned at 6:00 o'clock in the evening. In the morning, she recalled playing with several children under their house. In the afternoon, she slept from 1:30 p.m. to 2:30 p.m. Later, she watched T.V. with her sister Nurija, Albani and other children until 4:00 p.m. She did not recall playing with Harhada that day. However, Harhada helped her pack her belongings before she and her family left for Manila. On July 7, 1996, her uncle, Hajal, arrived in Palawan to inform them that her father had been charged with rape. She and her father went back to Zamboanga City to clear his name.[9]

The defense also presented 41-year old Lolita Abila, who lived in the same Mulu-Muluan government housing project occupied by the accused Cabalida and the complainant Harhada. She testified that when Hayratul went to Manila in May 1995, only Harhada, her sister Sarha and stepfather Alejandro Lebrado were left in the house.[10]

On October 24, 1997, the trial court convicted accused Cabalida. It found that:

> "Admittedly[,] the accused and the victim are neighbors in Mulu-Muluan, this City, as there is only one house that separates their houses from each other. Their respective families are known to one another and, in fact, as testified to by the victim, the accused Felipe Cabalida is well known to her, being her uncle. Notwithstanding this apparent closeness and relationship between the accused and the complainant, the latter cast(sic) aside the

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> same and boldly came to court to indict the accused for rape x x x."[11]

It dismissed the defense of denial of the accused, thus:

> "Against this indictment accused denied the charge and professed innocence. He said he did not do such act. Apart from this denial, the accused has not satisfactorily shown to the court where he was at the time of the alleged incident. There is nothing in his testimony which positively shows his whereabouts in the afternoon of May 29, 1995 - in what place he was and what he was doing on that particular date and time. Accused, however, tried to imply the possibility that the stepfather of the victim, Lando Lebrado (husband of Harhada's mother) may have sired the daughter of the victim. x x x. This wild attempt of the accused to suspect or maybe pass on criminal liability to the stepfather of the accused rests on no factual basis. There was no evidence adduced that would positively show that the victim and her stepfather had an affair before, particularly prior to March 21, 1996 when the victim gave birth to a baby girl who was later named Nurhina. The mere fact that only the victim, her sister Sarha and their stepfather Lando Lebrado were living in their house at Mulu-Muluan, for the period from April, 1995 to June 8, 1995, when the mother of the victim was in Manila, do (sic) not prove indiscretion on the part of Lando Lebrado much less establish (sic) that he had carnal knowledge with the victim and therefore sired the latter's daughter. Suspicion is not a substitute for proof."[12]

Hence, this appeal. Accused contends that the trial court convicted him of rape despite the failure of the prosecution to prove the crime beyond reasonable doubt.[13]

We find in his favor.

In the review of rape cases, we are guided by three (3) settled principles, to wit:

(1) while rape is a most detestable crime, and ought to be severely and impartially punished, it must be borne in mind that it is an accusation easy to be made, hard to be proved, but harder to be defended by the party accused, though innocent;

(2) that 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) that 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.[14]

In the case at bar, we find several facts which belie Harhada's claim that she was raped by accused-appellant.

First, she tarried five (5) months before telling her mother about the incident. According to her, it was on May 29, 1995 when she was raped by accused-appellant. It is well-established that accused-appellant left for Manila on June 21, 1995. Even then, Harhada did not utter a word although there was no longer any physical threat from accused-appellant. It was only because she became pregnant and was forced by her mother to tell who the father of the child was that she pointed to accused-appellant.

Second, there is cause to doubt the motive of Harhada in charging accused-appellant in the light of the following testimony she gave in the trial court:

> "On cross-examination
>
> Q: It was only in the house of your auntie in Mampang when you were able to give a name of (sic) your alleged abuser?

Harhada Lackua

A: Yes.

Q: And it was only after you were forced by your uncle Hamja to reveal a name, correct?

A: Yes.

Q: And when you said force[d], you were mauled by your uncle for you to be able to give a name of your alleged abuser?

A: Not necessarily by force, he asked me, he forced me by words to tell the name of my abuser, of the one who raped me because he said if I am not going to tell my abuser, my stepfather might be unjustly suspected.

Q:

So, at that time your uncle Hamja had brought out the possibility that your stepfather Alejandro Lebrado would be one of the probable suspect[s] as your abuser, correct?

A: No, because this uncle of mine is an intelligent fellow so he would anticipate and he can be trusted.

Q: The question, Miss Witness, was that as early as that time your uncle Hamja had already brought out the possibility that your stepfather Alejandro Lebrado would be one of the probable suspect[s] as your abuser, correct?

A: Yes.

Q: And that was because your uncle Hamja had known your situation in Mulu-Muluan, correct?

A: Yes.

x x x.

Q: So, it is correct that your uncle Hamja told you that if you will not tell them your stepfather Lando might be

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suspected, correct?

A: Yes.

Q: And because you did not want your uncle Lando to be suspected you decided to give the name of your alleged abuser, correct?

A: Yes."[15]

Third, we also doubt the identity of the accused-appellant considering Harhada's testimony that her assailant continued to torment her even after two (2) months had passed after the incident. Again, it ought to be stressed that accused-appellant left Mulu-Muluan on June 21, 1995, barely a month after the incident:

"Atty. Catherine Fabian

"Q: Even after two months had lapsed, the threats were repeated to you, correct?

A: Not anymore but only he would stare at me with meaning or with dagger look.

Q: And that was two months after the alleged incident?

A: Yes.

Q: And even after three months after the alleged incident the same threats were repeated, correct?

A:

Yes. Every time we meet or when our eyes meet. But you know after the incident I avoided him."[16]

In convicting accused-appellant, the trial court relied on the doctrine of presumptive guilt in rape cases. In People v. Godoy[17], we explained that the doctrine developed that where the testimony of the victim is credible, it is sufficient evidence to convict the accused mainly because the courts take judicial notice that a victim will not choose to accuse her attacker at all and subject herself to the stigma and humiliation of a public trial unless she is telling the truth.[18] However, this doctrine cannot override the Constitution which mandates that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved."[19] The purpose of this provision is to even out the prosecutorial power of state vis-a-vis the individual.[20] In fine, the guilt of the accused must be established beyond reasonable doubt[21] and his guilt depends on the strength of the prosecution's evidence and not on the weakness of his defense.[22] The trial court cannot convict accused-appellant of the serious crime of rape by heavily relying on the questionable logic that Harhada was

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telling the truth because of her boldness in charging accused-appellant. The trial court erred in failing to consider the blatant inconsistencies and improbabilities in her testimony.[23] Mere suspicion or conjecture, or probability that accused-appellant committed the crime or had the opportunity to do so can not overcome the presumption of innocence in his favor.[24]

Finally, we note that to accused-appellant's credit, he returned to Zamboanga City to clear his name. This is a strong indication of innocence.

IN VIEW WHEREOF, the decision of the Regional Trial Court is SET ASIDE. Accused-appellant is ACQUITTED on the ground that the prosecution was not able to prove his guilt beyond reasonable doubt. The Director of the New Bilibid Prisons (NBP) is directed to inform this Court of the implementation of this Decision within five (5) days from its receipt. No costs.

SO ORDERED.

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

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[1] Decision penned by Judge Tibing A. Asaali dated October 24, 1997.

[2] Decision, p. 14; Rollo, p. 32.

[3] Original Records, p. 1.

[4] TSN, Harhada Lackua, November 11, 1996, pp. 8-24.

[5] Radiologic Report, Original Record, p. 7.

[6] The rape was reported before the Women's Complaint Relation Section of the Zamboanga City Police Command; Case Report, Original Record, p. 39.

[7] TSN, Hayratul Lebrado, September 17, 1996, p. 15.

[8] TSN, Felipe Cabalida, January 16, 1997, pp. 2-26.

[9] TSN, Helen Cabalida, December 19, 1996, pp. 8-16.

[10] Decision, p. 8; Ro11o, p. 26.

[11] Ibid.

[12] Id., p. 27.

[13] Appellant's Brief, p. 1; Rollo, p. 48.

[14] People v. Godoy, 250 SCRA 676 [1995].

[15] Supra note 4, pp. 17-19

[16] Id., p. 15.

[17] Supra note 14.

[18] People v. Gomez, 279 SCRA 688 [1979].

[19] Article III, Sec. 14(2).

[20] "The prosecution of innocence, x x x, is founded upon the first principles of justice, and is not a mere form but a substantial part of the law. x x x. Its purpose is to balance the scales in what would otherwise be an uneven contest between the lone individual pitted against the People and all the resources at their command. Its inexorable mandate is that, for all the authority and influence of the prosecution, the accused must be acquitted and set free if his guilt cannot be proved beyond the whisper of a doubt." People v. Godoy, supra note 14, pp. 727-728.

[21] People v. Bagus, 277 SCRA 157 [1997].

[22] Supra Note 18.

[23] People v. Antido, 278 SCRA 425 [1979].

[24] People v. Salem, 280 SCRA 481 [1997].

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