PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DINDO AMOGIS Y CRINCIA, ACCUSED-APPELLANT.

G.R. No. 133102. October 25, 2001

Ponente: BUENA, J.

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BUENA, J.:

This is an appeal from the decision of the Regional Trial Court of Caloocan City, Branch 129, dated February 5, 1998, in Criminal Case No. C-51534, convicting Dindo Amogis of the crime of rape, the decretal portion of which reads:

> "WHEREFORE, premises considered, this Court finds the accused guilty beyond reasonable doubt of the crime charged, as defined and penalized under Article 335 of the Revised Penal Code, in relation to Section 11 of R.A. No. 7659. Accordingly, he shall serve the penalty of Reclusion Perpetua with all the accessory penalties under the law, and shall pay the costs.
>
> "By way of moral damages under Article 2219 of the Civil Code, the accused shall pay P50,000.00 to the complaining witness, without subsidiary imprisonment in case of insolvency.
>
> "Pursuant to Section 7, Rule 117 of the 1985 Rules on Criminal Procedure, the period of accused's preventive detention shall be credited to him.
>
> "Finally, let this Judgment serve as the Commitment Order for the City Jail Warden of Caloocan City to transfer the accused to the Bureau of Corrections, Muntinlupa City.
>
> "SO ORDERED."[1]

Appellant was charged by his "kumare" Helen Calupas, of rape, allegedly committed as follows:

> "That on or about the 24th day of December 1996, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of threats and intimidation, did then and there willfully, unlawfully and feloniously lie and have sexual intercourse with one HELEN CALUPAS y CHAVEZ against the latter's will and without her consent."[2]

Upon arraignment, appellant, assisted by counsel, pleaded not guilty to the offense charged and waived pre-trial. Thereafter, trial ensued.

The prosecution's case which was anchored mainly on the testimony of complainant Helen shows that on the evening of December 24, 1996, Helen was cooking and cleaning her house at Bagong Silang, Caloocan City while her three children were sleeping at the sala. Her husband was in Manila where he was employed as a construction worker.[3]

Helen decided to step out of the house where she saw appellant standing beside the door and smelling of liquor. She asked what he wanted but instead of making a reply, appellant pushed her inside the house, closed the door, pushed her further to a concrete wall and forcibly kissed her.[4] She pleaded for him to stop but appellant pushed

her to a room where he pulled out an ice pick. Pointing the weapon at Helen, appellant removed her T-shirt, jumper and her panty and ordered her to lie down on the floor. Still holding the ice pick, appellant ordered Helen to spread her legs and penetrated her and ejaculated. He remained in that position for thirty (30) minutes.[5] After the initial gratification, he stood and knelt in front of Helen and kissed her vagina, lips and breasts. Then, he forced her to stay on top of him but she resisted, prompting him to place himself on top of her again and penetrated her for the second time. Thereafter, he stood and dressed up and warned her not to report the incident to her husband and brother otherwise he would come back. He then left the house.

Helen narrated the incident to her kumare on January 6, 1997 who advised her to report the matter to the Purok Leader and Barangay Officials. They also reported the incident to the Urduja Police Station where she was advised to get a medical certificate.[6] She gave a sworn statement on January 10, 1997.[7]

Appellant denied having raped Helen and claimed that on the night of December 24, 1996 at about 9 o'clock, he was sent by his mother to buy coke at a nearby store. After buying the coke, he sent his cousin to bring the coke to his mother because he was invited to a drinking spree at the store. Thereafter, Helen joined the group and invited him to eat supper in her house which he accepted. Then, both proceeded to Helen's house where she gave him "biko". Five (5) minutes later, they went back to the store and joined the others. Helen sat beside him. He asked Helen why her husband had not been coming home. She told him that she did not know why. Both talked for about thirty (30) minutes until some policemen arrived and arrested him based on a complaint for slight physical injuries filed by his uncle.

The testimony of appellant was corroborated by Charlo Linaga,[8] Andrew Sinsoro,[9] and Editha Obseñares,[10] who testified that they saw appellant at about 9 o'clock in the evening of December 24, 1996 at a nearby store drinking liquor with other people. Helen was with the group although she was merely engaged in a conversation with appellant. After about fifteen (15) minutes, appellant and Helen left the store and proceeded to the latter's house which was about ten (10) meters away. Ten minutes later, the two emerged from the house and went back to the store. At about 10:30, on that same night, policemen arrived at the store and arrested appellant for physical injuries.

The trial court convicted appellant holding that "no married woman with three children would expose herself to humiliation and embarrassment if her accusations were not true."[11] The trial court further rationalized:

> "The accused did not deny having set foot into the complainant's house on Christmas eve of 1996. He alleged he was invited by complainant to eat `biko', a native delicacy for merienda, which he supposedly did. Based on the accused's attribution of hospitality to complainant, he now claims in effect that such hospitality turned into a rampaging act of hostility in the form of the impending indictment against him. The alleged act of hospitality on the part of complainant is a very clear indicium that the alleged reasons behind the supposed evil or improper motive in filing this case are mere figments of the accused's imagination. And assuming in gratia argumenti that he was actually invited by the complaining witness to partake of her `biko' inside her house with only her 3 sleeping minor children in her company, the question that arises is did he only eat `biko' or something else, causing the complainant to indict him for a serious offense? Simply stated, the accused's defenses are so diametrically opposed to each other that this Court is unable to see even a glimpse of any cogent reason to sustain his alleged innocence."[12]

Appellant now pleads for the reversal of the decision alleging that the trial court gravely erred:

> 1. ....in giving full weight and credence to the incredible and unbelievable testimony of private complainant and in not considering the defense interposed by the accused-appellant.
>
> 2. ....in convicting accused-appellant of rape despite failure of the prosecution to prove his guilt beyond reasonable doubt.

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The instant appeal dwells mainly on the credibility of complainant Helen. Appellant argues that the trial court ignored and overlooked discernible defects in Helen's testimony which proves that no rape was committed. He asserts that Helen concocted the charge of rape in order to save face because of the rumors in the neighborhood that they have an illicit relationship.[13]

In the review of rape cases, the Court is guided by three (3) settled principles, to wit: (a) while an accusation for rape can be made with facility, it is difficult to prove and more difficult for the person accused though innocent to disprove; (b) 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; (c) 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 of the defense.[14] Hence, to forestall the danger and impiety of falsehood, and to repel any influence that the story may have been a fabrication, every story of defloration must never be received with precipitate credulity.[15]

Guided by these principles, we find that the sexual congress between appellant and Helen was consensual. The actuations of Helen before, during and after the sexual intercourse fails to convince this Court that she was raped by appellant.

Evidence shows that before the alleged rape, Helen and appellant were seen together in front of Pidong sari-sari store in Bagong Silang, Caloocan, where the latter was drinking with his cousins. Helen and appellant went to the latter's house which was three (3) houses away from the store. Thus, defense witness Charlo Linaga and corroborated by Andrew Sinsoro[16]and Editha Obeseñares,[17] testified:

> "Atty. Ongtenco:
>
> What was Dindo Amogis and his group doing at that time?
>
> "Witness:
>
> When I arrived there, he was already there and they were having a drinking spree there.
>
> "Q: What about Helen Calupas, what was she doing with the group?
>
> "A: I saw her having a conversation, sir.
>
> "Q: With whom was she having a conversation?
>
> "A: With Dindo Amogis and other companions of Dindo.
>
> "Q: How long did Dindo Amogis stay at the store from the time that you saw them?
>
> "A: About 15 minutes, sir.
>
> "x x x x x x x x x
>
> "Q: You said they talked for about 15 minutes, after that 15 minutes, what happened, if any, between Dindo Amogis and Helen Calupas?
>
> "A: They went inside the house of Helen Calupas.
>
> "x x x x x x x x x
>
> "Q: What happened after you said Dindo and Helen went inside the house of the latter?
>
> "A: Helen entered first, sir. She pulled the screen of the house and then, allowed Dindo Amogis to enter first.
>
> "Q: What happened when you said you saw Helen Calupas ushered Dindo Amogis inside her house?

"A: I do not know anymore what they did inside.

"Q: Do you know by chance how long did they stay inside the house of Helen Calupas?

"A: About 10 minutes, sir.

"Q: Why do you know that they stay (sic) inside for only 10 minutes?

"A: Because I was wearing a watch, sir."[18]

After the two came out of Helen's house, 2 policemen arrested appellant for physical injuries filed by his uncle. Helen was present at the time of the arrest but she never reported the rape. Her silence only strengthens the Court's finding that no rape was committed.

Moreover, the prosecution never refuted the testimonies of the defense witnesses. Neither did they show any improper motive on the part of the said witnesses to falsely testify against Helen. It is an accepted rule that where there is nothing to indicate that a witness was actuated by improper motives, his positive and categorical declarations on the witness stand under solemn oath deserves full faith and credence.[19]

Further, if indeed appellant had sex with Helen, the latter's testimony reveals that no force or intimidation was exerted upon her person. Helen candidly narrated that prior to the alleged sexual assault appellant's kisses were gentle for which she offered no resistance. Thus:

"Q You did not put up a fight or resist his kisses?

"A I am afraid that is why I was not able to shout.

"Q And kisses were gentle? That was the reason why you were still able to avoid them?

"A I tried to avoid the kisses by moving my head.

"x x x x x x x x x

"Atty. Ongteco:

You were still able to avoid the kisses because they were still gentle kisses?

"A Yes, sir.

"Q And at that time or during that time that he was trying to kiss you and you were trying to avoid the kisses, nothing comes from your mouth or you did not utter anything?

"A Yes, sir.

"x x x x x x x x x

"Q You are saying that he no longer was able to control himself and he pushed you inside one of your rooms?

"A Yes, sir.

"Q Where was (sic) your children sleeping at that time?

"A My children were sleeping in the sala, sir.

"Q So, he pushed you towards one of the rooms because you were going to disturb your children who were then sleeping?

"A Yes, Sir. (Ano po ulit ang question?)"[20] (Underscoring Ours)

In addition, the ease by which appellant allegedly inserted his penis into Helen's vagina indisputably prove the absence of any external physical force on her person. Again, Helen's testimony in this regard is quite revealing:

> "Q Now, Madam Witness, of course, during intercourse, you knew by experience that your husband cannot easily penetrate if you just straighten your legs?
>
> "A Yes, sir.
>
> "Q And you also knew by experience that if you keep on squirming, gyrating or struggling, your husband could not easily or conveniently make a push and pull movement at regular intervals?
>
> "A Yes, sir.
>
> "Q But at that time that accused Dindo Amogis, according to you, was raping you, he did not have any difficulty in making a push and pull movement?
>
> "A Yes, sir.
>
> "Q For 30 minutes?
>
> "A Yes, sir."[21]

The absence of rape is bolstered by the absence of any external sign of physical injury on Helen's body. This was clearly testified to by Ravell Ronaldo Baluyot, Medico-Legal Officer, who conducted the physical and genital examination on Helen, thus:

> "Law Intern:
>
> Dr. Baluyot, can you please state the result of your examination?
>
> "A The result of my examination of the victim was that.....would you want me to read the report?
>
> "Court:
>
> Can not you be succinct or brief, after all I will go over the exhibits. Be succinct or brief.
>
> "A I found her to have no external physical injuries, further examination of the geniteria reveals that the hymen was reduced to corroncholia.....
>
> "x x x x x x x x x
>
> "A The hymen, Your Hohor was reduced into hymenal tags, which means it was broken into pieces already, because originally, the hymen is fresh in structure and I believe that this is due to victim's previously giving birth, where a big baby passes through the hymen causing it to destroy (sic).
>
> "Q It states here that' there was no evidence or sign of extragenital physical Injuries, can you please explain the meaning of no extragenital physical injuries?
>
> "A No extragenital physical injuries means there were no external signs of injuries, any signs of physical Injuries, that refers to the whole body, physically, no injuries.
>
> "Q In what situation can there be sexual intercourse resulting in extragenital physical injuries?
>
> "A Physical Injuries are usually the result of force, if she was handled with physical force it may cause contusion and these things may happen (extragenital physical injuries)."[22] (Underscoring Supplied)

This Court has held that where, as here, there was absence of abrasions and contusions on the victim's body, her claim that force and violence were exerted by the appellant in having sexual intercourse with her is seriously

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doubted.[23]

Equally important is Helen's testimony that appellant raped her for an unusual length of thirty (30) minutes. Note her ridiculous story:

"Q And then what happened next?

"A He inserted his penis inside my vagina, ma'am.

"Q After that, what happened next?

"A After inserting his sex organ he stayed for 30 minutes on my top.

"Q What did you do next?

"A I just cried and I begged but he did not listen.

"Q After that what happened next?

"A He ejaculated, ma'am."[24]

The manner by which Helen was allegedly raped, as noted above, is incredible. Normally, a rapist, who is pressed for time so as not to be caught in flagranti, would not leisurely engage in sexual intercourse with his victim, as what actually happened in this case.

But the incredible tale of Helen did not stop there. She further narrated that after the first sexual intercourse, appellant engaged her in foreplay by kissing her vagina, lips and breasts before having a second intercourse with her. Thus, Helen testified:

"Q After that, what happened next?

"A He inserted his penis inside my vagina, ma'am.

"Q After that, what happened next?

"A After inserting his sex organ he stayed for 30 minutes on my top.

"Q What did you do next?

"A I just cried and I begged but he did not listen.

"Q After that what happened next?

"A He ejaculated, ma'am.

"Q What did he do after that?

"A He stood up.

"Q What happened after that?

"A He knelt in front of me.

"Q What did he do then?

"A And he kissed my vagina, sir.

"Q What did you do after that?

"A After kissing my private part, he kissed my lips.

"Q What did he do then?

"A He kissed my breast, ma'am."[25]

A man who intends to rape a woman would not go through the rigors of sexual foreplay after he has satisfied his lust and before another round of sexual intercourse. Indeed, this does not happen in rape cases, but only in consensual sex between two sexually-starved participants.

But even assuming that there was force and intimidation, there is no clear showing that Helen intended to resist the sexual advances.

In rape cases alleged to have been committed by force, threat or intimidation, 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 upon his victim to achieve his end. Failure to do so is fatal to its cause.[26]

The house where the crime was committed was not an isolated place. Helen admitted that there were many people queued at the well-lighted artesian well which was just across the house. When she was pushed by appellant inside the house and started kissing her, Helen did not shout for help as a woman would instinctively do. Even during the sexual assault, Helen not did actively defend herself:

"Q Now, at the time that he was removing your panty, according to you, the accused was stooping or bending down so that he could remove your panty?

"A Yes, sir.

"Q And you said you just watched him?

"A I cannot do anything, sir.

"Q You did not try, or you did not entertain the thought of trying to kick him or hit him on the nape?

"A No, sir, because I got scared. I got scared of his body."[27]

It does not appear logical at all that Helen would not struggle against the removal of the shield of the very object of appellant's lust.[28] Resistance must be manifested and tenacious. A mere attempt to resist is not the resistance required and expected of a woman defending her honor and chastity.[29]

Furthermore, Helen had every opportunity to flee from appellant but chose not to. It must be recalled that after the first sexual intercourse, appellant wanted Helen to be on top of him but the latter maintained her original position where she was under. Thus:

"Court:

How many times were you penetrated?

"A Two times, Your Honor.

"Atty. Ongteco:

So he made love to you 2 times that evening?

"A Yes, sir.

"Q In the same position?

"A Yes, sir.

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"Q And you also testified that he was only able to make love to you on (sic) the same position because on the second time after he first made love to you for the first time, he tried to put you on his top or bring you on his top?

"A He compelled me to be placed on top of him.

"Q But according to you, you struggled?

"A Yes, sir.

"Q And based on your very own words, you struggled to maintain your original position?

"A Yes, sir.

"Q And you were very successful in struggling to maintain your original position?

"A Yes, sir.

"Q When you were already on top of him, you would agree with me that it would be more easy (sic) to struggle up on top than to struggle to maintain in lying position, or to struggle to stand up?

"A That was the first thing that entered my mind, sir, to return or to go back to my original position."[30]

The Court recognizes that rape victims have no uniform reaction to sexual assault; while some may offer strong resistance, others may be too timid to resist significantly the alleged attack. Helen's conduct taken in its entirety, however, indubitably casts doubt on her credibility and the veracity of her assertion.[31]

In fine, there is no doubt that Helen concocted the charge of rape in order to save face because of the rumors in their neighborhood that she and appellant had an illicit relationship. In fact, Helen admitted the said rumor. Thus:

"Atty. Ongteco:

Despite the fact that you claim that you were not romantically linked with the accused, there were rumors spreading that you were maintaining an illicit relationship with your `kumpare'?

"Atty. Sy:

Objection, Your Honor, counsel is asking for an opinion.

"Court:

If I were you, I will not object because she will probably maintain her answer. Answer.

"Ms. Calupas:

Yes, sir, there were rumors spreading about us, but that rumor is not true.

"Court:

She admits the existence of the rumors."[32]

This Court will not hesitate to reverse a judgment of conviction and acquit the accused where there is strong indications pointing to the possibility that the rape charge was motivated by some factors other than the truth as to its commission.[33]

When the guilt of the accused has not been proven with moral certainty, it is the policy of long standing that the presumption of innocence of the accused must be favored and his exoneration be granted as a matter of right.[34] For, the presumption of innocence is founded upon substantial law and basic principles of justice, it serves to

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balance the scales of justice in what would otherwise be an uneven contest between a single individual accused of a crime and the prosecution which has all the resources of the government at its command.[35]

WHEREFORE, the assailed judgment of the Regional Trial Court of Caloocan, dated February 5, 1998, is hereby REVERSED and SET ASIDE. Accused-appellant DINDO AMOGIS is hereby ACQUITTED on ground of reasonable doubt, and his IMMEDIATE RELEASE from prison is hereby ORDERED, unless he is otherwise detained for any other lawful or valid cause.

SO ORDERED.

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

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[1] RTC Decision, p. 127-137, Records.

[2] Information, p. 1, Records.

[3] TSN, July 8, 1997, p. 5.

[4] Ibid., p. 8.

[5] TSN, July 8, 1997, p. 10.

[6] Exhibit "B", Records, p. 60.

[7] Page 2, Ibid.

[8] TSN, September 18, 1997.

[9] TSN, October 21, 1997.

[10] TSN, October 30, 1997.

[11] Decision, p. 8.

[12] RTC Decision, p. 9.

[13] Appellant's Brief.

[14] People v. Rico Jamlan Salem, 280 SCRA 841, 846 [1997]; People v. Tacipit, 242 SCRA 241 [1995].

[15] People v. Alvario, 275 SCRA 529 [1997].

[16] TSN, October 21, 1997.

[17] TSN, October 30, 1997.

[18] TSN, September 18, 1997, pp. 6-7.

[19] People v. Benito, 303 SCRA 468 [1999]; People v. Payot, 308 SCRA 43 [1999]; People v. Rada, 308 SCRA 191 [1999].

[20] TSN, July 8, 1997, pp. 26-29.

[21] TSN, July 16, 1997, pp. 12-13.

[22] TSN, July 13, 1997, pp. 6-7.

[23] People v. Estrera, 285 SCRA 372 [1998].

[24] TSN, July 8, 1997, pp. 10.

[25] TSN, July 8, 1997, pp. 10-11.

[26] People v. Clemente, 316 SCRA 790, 799-780 [1999].

[27] TSN, July 16, 1997, p. 8.

[28] People v. Salem, 280 SCRA 849 [1997].

[29] People v. Cabading, 174 SCRA 48 [1989].

[30] TSN, 97, pp. 12-14.

[31] People v. Arnold Ratunil, 334 SCRA 721 [2000].

[32] TSN, July 16, 1997, p. 22.

[33] People v. Domogoy, 305 SCRA 75 [1999].

[34] Cosep v. People, 290 SCRA 378 [1998].

[35] People v. Maluenda, 288 SCRA 225 [1998].

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