

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FORTUNATO BALANO, ACCUSED-APPELLANT.

G.R. No. 138474. March 28, 2001

Ponente: VITUG, J.

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VITUG, J.:

An appeal is taken from the 26th February 1999 decision[1] of the Regional Trial Court of Isulan, Sultan Kudarat, Branch 19,[2] in Criminal Case No. 2329, convicting accused Fortunato Balano of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the private complainant, Elsie Ninang, the amounts of P50,000.00 for moral damages and P20,000.00 for exemplary damages.

The Information filed before the court a quo charging the accused with the crime of rape read:

"That on or about 10:00 o'clock in the evening of April 20, 1996, at Sitio Binandosan, Barangay Christianuevo, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste designs, and by means of force and intimidation and violence, did then and there, wilfully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of ELSIE NINANG against her will and consent." [3]

Accused Fortunato Balano pleaded "not guilty" to the charge when arraigned.

At the trial, the prosecution presented five witnesses, namely, the private complainant Elsie Ninang, her daughter Richeryll Ninang, her husband Alejandro Ninang, Dr. Gaudencio Labian, and SPO4 Vicente Oro. The defense, in its case, placed the accused himself at the witness stand and, on sur-rebuttal, one Orlando Torres to corroborate Balano's alibi.

Private complainant Elsie Ninang testified that on 20 April 1999, she was in her house at Poblacion II, Binandosan, Lebak, Sultan Kudarat, together with her daughter Richeryll and niece Genelyn. It was around ten o'clock in the evening, that day, when she was awakened by a beam from a flashlight held by the accused. He held her by the neck and threatened to kill her. Richeryll was awakened, and seeing what the accused was doing to her mother, she yelled, "Mother," "Mother." The angered accused told Elsie to tell her daughter to stop shouting. Threatened, Richeryll covered herself with a blanket. The accused hit Elsie on her left chest, lower portion of her breast and abdomen, causing her to lose consciousness for about half an hour. When she came to, she found herself naked. She then realized that the accused had raped her; indeed, she could feel his semen coming out from her vagina. Accused pointed his knife at her, telling her to go with him and threatening to kill her if she did not. She pleaded with the accused to just leave and go home. After awhile, he left.

Elsie knows the accused quite well, her husband, Alejandro, being the brother of the wife of the accused.

The following day, Elsie went to see her sister-in-law Anita Empalmado and related to her what the accused had done. Anita, together with Elsie and Richeryll, repaired to Kumalawit, Lebak, Sultan Kudarat, where Alejandro and the latter's brother were harvesting palay. Informed of the incident, Alejandro, Elsie and Richeryll, went to a

physician to have Elsie examined before reporting the matter to the police.

Richeryll Ninang, the eight-year-old daughter of Elsie, corroborated the testimony of her mother. She testified that on 20 April 1996, around ten o'clock in the evening, she, together with her mother and cousin Genelyn, was sleeping in their house when she awoke and saw the accused choking and hitting her mother. Her father, Alejandro, was in Kumalawit at the time. She started to shout until the accused threatened to kill her. She covered herself with a blanket but in a way that she could still manage to see the accused undress her mother and place himself on top of her. After he was through, her mother pleaded with the accused to leave them alone.

Dr. Gaudencio Labian, the Chief of Medical and Community Hospital at Lebak, Sultan Kudarat, found Elsie to have sustained injury on the right side of the face and right middle portion of the neck, as well as contusions on her breast bone and right hip. Dr. Labian, however, was unable to conduct a genital examination.

Police investigator SPO4 Vicente Oro testified that on 22 April 1996, he took the sworn statements of Elsie Ninang and Richeryll Ninang following the complaint for rape lodged against Fortunato Balano.

Alejandro Ninang, the victim's husband, said that he was not at home but elsewhere at work in the evening of 20 April 1996. He only came to learn of the sexual assault when his wife went to Kumalawit to report to him the incident. He accompanied his wife to a doctor to have her examined. He confirmed that the accused was the husband of his sister.

In his defense, accused Balano claimed that between five thirty in the afternoon and eight o'clock in the evening of 20 April 1996, he was all the time at the house of his employer Lorenzo Cabalfin in Tinungos, Brgy. Christianuevo, Lebak, Sultan Kudarat, drinking "tuba" with his brother-in-law, Alejandro Ninang, his employer Lorenzo Cabalfin and his wife, and an older brother. Alejandro later left the group for Binandos, Lebak, Sultan Kudarat. Balano said that he slept at his employer's house. The following day, he was surprised to be invited to the house of a barangay official and informed of a complaint for rape filed by Elsie Ninang against him. He was advised by the barangay official to proceed to the house of his parents-in-law in Binandos. When he arrived, Alejandro told him not to worry about the "problem" as Alejandro knew that his wife was flirting with other men. Alejandro intimated to him that on 20 April 1996, he caught his wife having sexual intercourse with another man in their house at Binandos. Alejandro, the accused said, had even promised to testify in his favor. He denied all the charges hurled against him by Elsie. He averred that the only motive of Elsie in filing the complaint for rape was to get back at him because he slapped her at one time in a confrontation between them.

On rebuttal, Alejandro and Elsie both refuted the asseverations of Balano.

On sur-rebuttal, the defense presented Orlando Torres to corroborate the testimony of the accused that they had a drinking spree in the house of Cabalfin on 20 April 1996 from five thirty in the afternoon to ten o'clock in the evening. He said that Alejandro left for home at around eight o'clock in the evening. He slept in the house of Cabalfin, together with Balano and the latter's wife, because of a heavy downpour that night.

The accused was later called back to the witness stand to testify that Elsie and Alejandro started to live separately following the 20th April 1996 incident.

The trial court rejected the defense claim of denial, as well as alibi, and on 26 February 1999, rendered a decision finding the accused guilty of rape; the trial court held:

"WHEREFORE, upon all the foregoing considerations, the Court finds the accused, Fortunato Balano, guilty beyond reasonable doubt of the crime of rape. Accordingly, the Court hereby sentences the accused, Fortunato Balano:

"a) to suffer the penalty of RECLUSION PERPETUA;

"b) to indemnify the private offended victim, Elsie Ninang, in the amount of P50,000.00 by way of moral damages, and the further amount of P20,000.00 as exemplary damages, conformably with current jurisprudential policy; and

"c) to pay the costs.

"Being a detention prisoner, the accused, Fortunato Balano, is entitled to full credit of the entire period of his preventive imprisonment, in accordance with Article 29 of the Revised Penal Code, as amended by R.A. No. 6127, provided he had agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, with only four-fifths (4/5) thereof." [4]

In this appeal, Fortunato Balano insists that he is innocent, and he seeks a reversal of his conviction. The Office of the Solicitor General, in the Appellee's brief, maintains otherwise.

In reviewing rape cases, the Court, as always, has been guided by the settled principles that - 1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult, however, for the person accused, although innocent, to disprove; b) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (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 for the defense. [5]

Contrary to the claim of the defense, Elsie's testimony appears to be most credible and convincing. She has been able to recount her ordeal in the hands of accused-appellant in a plain and straightforward manner. Hereunder is her testimony (reproduced verbatim from the transcript of stenographic notes):

"FISCAL VALENSON:

"Q On April 20, 1996, in the evening, do you remember where did you sleep?

"A In our house, sir.

"Q Who were your companions in your house when you sleep there?

"A My daughter and my niece, sir.

"Q You said you are married. Where did your husband sleep on April 20, 1996?

"A In Kumalawit, Lebak, Sultan Kudarat, sir.

"Q How far is that place from your house?

"A It is very far, sir.

"Q

On April 20, 1996, when you sleep in your house at around 10 o'clock in the evening, do you remember who came to your house?

"A Yes, sir.

"Q Who was that person who came to your house?

"A It was Fortunato Balano, sir.

"Q When you slept in your house on that evening of April 20, 1996, did you lock the door of your house?

"ATTY. GUERRERO:

Leading, your honor.

"COURT:

Reform the question.

"FISCAL VALENSON:

"Q Where did this Fortunato Balano pass when he get inside your house?

"ATTY. GUERRERO:

No basis, your honor.

"COURT:

Was that testified by the witness?

"FISCAL VALENSON:

Yes, your Honor.

"COURT:

"Q

What do you mean when you said Fortunato Balano went to your house on that evening of April 20, 1996?

"A He went to our house, your honor.

"Q Inside your house or outside?

"A Inside, your honor.

"FISCAL VALENSON:

"Q When this Fortunato Balano came to your house, were you already sleeping or not yet?

"A I was asleep at that time, sir.

"Q

And when this Fortunato Balano get inside your house that evening of April 20, 1996, do you know what did Fortunato Balano do in your house?

"ATTY. GUERRERO:

Incompetent. She was sleeping then, your honor.

"COURT:

"Q

How did you know that Fortunato Balano was inside your house at about 10 o'clock in the evening of April 20, 1996, when you said that you were asleep?

"A I woke up when he was already inside or upstairs, your honor.

"Q Why. Did you expect him to arrive in your house at about 10 o'clock in the evening of April 20, 1996.

"A No, your honor.

"Q How did it happen you wake up when you said you were asleep at about that time?

"A He was bringing a flashlight, your honor, and the light reflected on me, your honor.

"Q Are you telling the Court that by reason of the light coming from the flashlight that you were awakened?

"A Yes, your honor.

"FISCAL VALENSON:

"Q

And when you said you wake up while this Fortunato Balano was in your house using a flashlight, what happened next?

"A He immediately choked me and boxed me and he tried to kill me, sir.

"Q And when he choked you and boxed you and he said he will kill you, what did you response to him?

"A After boxing me, sir, or after mauling me, I was unconscious.

"Q Why. How many times did this Fortunato Balano boxed you?

"A Several times, sir.

"Q What part of your body was hit when he boxed you many times?

"A On my left chest, on the lower portion of my breast right side, sir, and on my abdomen.

"Q

After you were boxed several times by Fortunato Balano and you lost consciousness, after that, what happened to you?

"ATTY. GUERRERO:

Your honor. . .

"FISCAL VALENSON:

"Q How many hours or minutes were you able to regain consciousness?

"A For a long time, sir.

"Q Ten minutes, 15 minutes or 30 minutes?

"A Maybe about 30 minutes more or less, sir.

"Q When you regained consciousness, what did you discover?

"A I was totally naked, sir.

"Q And when you noticed that you were totally naked, where was then this Fortunato Balano at that time?

"A He was on my side, sir.

"COURT:

"Q Standing?

"A He was sitting, your honor.

"Q What about you, what was your position at that time?

"A I was lying, your honor.

"FISCAL VALENSON:

"Q And when regain consciousness and you noticed that you were naked, what else did you do?

"A I stood up and I felt the semen coming out from my private part.

"Q How did you find that?

"A Because I touched that with my finger, sir.

"Q And at that time, what did this Fortunato Balano do next?

"A Fortunato Balano embraced me and he pointed his knife on my left side and told me to go with him.

"Q And when he told you to go with him, what was your response to him?

"A I told him why he wanted me to go with you since you have a family.

"COURT:

"Q What do you mean by that?

"A Because the wife of Fortunato Balano and my husband are brother and sister, your honor.

"FISCAL VALENSON:

"Q

At the time when this Fortunato Balano embraced you and pointed a knife to you and told you to go with him, was he dressed or was he naked at that time?

"A He was naked, sir.

"Q He has no underwear?

"A None, sir.

"Q

Now, when you told him why should I go with you when you were already married, what was the response of Fortunato Balano?

"A He told me that if I will not go with him he prefer to left me behind dead or go with him alive.

"Q And when he told you that way, what did you answer him?

"A I told him do not do that to me because I have no parents here and my husband is not around.

"Q And when you told that way to him, what did he do next?

"A He still continued pointing his bolo on my side, sir.

"COURT:

"Q How big or long was that bolo?

"A About this, your honor, more than two feet.

"Q Was that bolo pointed or no?

"A Yes, your honor.

"FISCAL VALENSON:

"Q After that, what else happened?

"A

After that, sir, I told him to better go home because it was already night time and at that time it was raining and his wife might be looking for him and I told those words in a nice way because he was threatening to kill me, sir.

"Q And when you said those words, what did Fortunato Balano do next?

"A He left, sir.

"Q

You testified a while ago that you touched your vagina and you noticed sperm cell. When you noticed that sperm cell, what came to your mind?

"A He really abused me, sir.

"Q Why do you say that?

"A Because of that fluid that come out from my private part, sir.

"Q Before April 1996, how long have you known this Fortunato Balano?

"A For quite a long time, sir.

"Q If you are ask to identify this Fortunato Balano, will you be able to identify him?

"A

Yes, sir, that person. (WITNESS POINTING TO A PERSON INSIDE THE COURTROOM WHO WHEN ASKED HIS NAME STOOD UP AND ANSWERED THAT HIS NAME IS FORTUNATO BALANO)."[6]

The imputation by accused-appellant of an ill-motive on the part of the private complainant is too flimsy to be given credence. A plain housewife would not unduly just subject herself to so humiliating a public scrutiny as that which is attendant in criminal accusations of this nature. It would also be quite unlikely for her to risk ridicule or possible alienation from family and friends.[7]

The failure of Elsie to submit herself to genital examination, bewailed by accused-appellant, deserves scant consideration. A medical examination is not an indispensable requirement for the successful prosecution of rape. The testimony of the victim alone, if credible, is sufficient to convict an accused of that crime.[8]

Equally important, the narration given by the private complainant was bolstered by the testimony of her daughter, Richeryll, who witnessed the entire episode committed against her mother. She recounted how accused-appellant, whom she positively identified, physically abused and raped her mother. She testified (reproduced verbatim from the transcript of stenographic notes) thusly:

"FISCAL:

"Q At around 10:00 o'clock in the evening of April 20, 1996, do you remember who come to your house?

"A Yes, sir.

"Q Who was that person?

"A It was Fortunato Balano, sir.

"Q When this Fortunato Balano came to your house what did he do there?

"A He choked my mother, sir.

"Q What else did he do?

"A He boxed my mother, sir.

"Q When you saw this Fortunato Balano choked your mother, what did you do?

"A

I shouted and this Fortunato Balano told my mother like this, 'stop your daughter from shouting or else I will kill her.'

"Q And after that what happened?

"A He undressed my mother, sir.

"Q What about you what did you do after that?

"A I covered myself with a blanket, sir.

"Q And how were you able to see that Fortunato Balano undressed your mother?

"A

Because while covering myself with a blanket I was able to see that act because my other eye was left uncovered, sir.

"Q After Fortunato Balano undressed your mother what did he do to your mother?

"A He also undressed himself, sir.

"Q And after that what did he do next?

"A

He placed himself on top of my mother, sir."[9]

Accused-appellant assails the credibility of Richeryll's testimony in failing to provide the description of her mother's clothes at the time of the incident. Given Richeryll's tender age and her trauma in witnessing the assault on her mother, the child-witness cannot be expected to recall every detail of the incident. Indeed, the minor lapses in her testimony should tend to buttress, rather than weaken, her credibility.[10]

The Court can only accord great respect to the factual findings of the trial court. The well-entrenched rule is that an appellate court will not disturb the assessment of the trial court on matters of credibility, considering that the latter would naturally be in a much better position than an appellate court to appreciate testimonial evidence. The known exceptions from the rule, such as when the trial court is shown to have plainly overlooked certain facts of substance and value which, if considered, could likely affect the result of the case, or when the evidence on record

utterly fails to support or substantiate the findings and conclusions of the trial court,[11] are not here extant.

In the face of the strong evidence against him, accused-appellant's claim of alibi hardly needs to be belabored.

The crime of rape is defined in and made punishable under Article 335 of the Revised Penal Code, as amended by Section 11, of Republic Act No. 7659, which reads:

"ART. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances.

"1. By using force or intimidation;

"2. When the woman is deprived of reason or otherwise unconscious; and

"3. When the woman is under twelve years of age or is demented.

"The crime of rape shall be punished by reclusion perpetua.

"Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

"When the rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.

"When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.

"The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

"1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

"2. When the victim is under the custody of the police or military authorities.

"3. When the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.

"4. When the victim is a religious or a child below seven (7) years old.

"5. When the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.

"6. When committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.

"7. When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation."

There being neither mitigating nor aggravating circumstance alleged or proved, the sentence of reclusion perpetua pronounced by the court a quo conforms with law.

As to the monetary liability, the crime of rape has been said to be not just a case of physical violation but one that actually debases a woman's dignity, leaving a stigma on her honor and scarring her psyche for life.[12] The award to the victim in the amount of P50,000.00 for moral damages and P20,000.00 for exemplary damages, plus an additional award of P50,000.00 by way of civil indemnity, would be in keeping with prevailing jurisprudence.

WHEREFORE, the decision of the Regional Trial Court of Isulan, Sultan Kudarat, Branch 19, in Criminal Case

No. 2329, finding Fortunato Balano guilty beyond reasonable doubt of the crime of rape, sentencing him to suffer the penalty of reclusion perpetua, is AFFIRMED with MODIFICATION that accused-appellant, in addition to the moral and exemplary damages decreed by the trial court, is likewise ordered to pay an additional civil indemnity of P50,000.00 to private complainant. Costs against accused-appellant.

SO ORDERED.

Melo, (Chairman, Third Division), Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

[1] Rollo, pp. 17-41.

[2] Judge German M. Malcampo, presiding.

[3] Records, p. 10.

[4] Rollo, pp. 43-44

[5] People vs. Perez, 270 SCRA 526.

[6] TSN, 12 February 1997, pp. 3-8.

[7] People vs. Mamalayan, 280 SCRA 748.

[8] People vs. Limon, 306 SCRA 367.

[9] TSN, 13 February 1997, pp. 2-3.

[10] People vs. Querido, 229 SCRA 745.

[11] People vs. Limon, 306 SCRA 367.

[12] People vs. Lustre, 06 April 2000, G.R. No. 134562.

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