

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCIANO BERTULFO Y GELEG, ACCUSED-APPELLANT.

G.R. No. 143790. May 07, 2002

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

This is an appeal from the 24 May 2000 decision[1] of the Regional Trial Court of Quezon City, Branch 86 in Criminal Case No. Q-96-68588, finding accused-appellant Marciano Bertulfo y Geleg (hereafter MARCIANO) guilty beyond reasonable doubt of the crime of rape committed on Rhiza Oliverio (hereafter RHIZA), imposing upon him the penalty of reclusion perpetua and ordering him to pay to RHIZA P50,000 as indemnity, and P50,000 as moral damages.

The accusatory portion of the complaint[2] states, thus:

The undersigned (complainant) accuses MARCIANO BERTULFO Y GELEG of the crime of Rape, committed as follows:

That on or about the 10[th] day of November 1996 in Quezon City, Philippines, the said accused by means of force and intimidation, to wit: by then and there wilfully, unlawfully and feloniously undressed (sic) RHIZA OLIVERIO Y HEMOROS and put himself on top of her and thereafter have (sic) carnal knowledge with the undersigned complainant against her will and without her consent.

CONTRARY TO LAW.

MARCIANO entered a plea of not guilty at his arraignment.

The first witness presented by the prosecution was 16 year-old RHIZA. She is from Lanao del Norte, but her aunt Normalita Reyes brought her to Ozamis City and then to Manila with the promise of sending her to school. After a year and four months since arriving in Manila, however, RHIZA was still not attending the promised schooling. Instead, Normalita made her wash clothes, clean the house and take care of two-year old Stephen Bryan, Normalita's son with her common-law spouse MARCIANO. Sometime in September 1996, Normalita left the Philippines to work in Japan. Since then, RHIZA stayed with Stephen in his room, unless MARCIANO was around, where upon she would leave the room and sleep in the sala.[3]

On 10 November 1996, at 7:00 a.m., while sleeping alone with Stephen in his room, RHIZA was awakened upon sensing that MARCIANO was beside her. MARCIANO went on top of her and told her in Cebuano, "Ayaw kang magsinggit, kung magsinggit ka, patyon kita,"[4] which means, "Do not shout, I will kill you if you shout." MARCIANO removed her shorts and panty then took off his brief. He then inserted and pushed his penis into her vagina and held and sucked her breasts. Even in pain, RHIZA tried to push him away, but her resistance proved unavailing against his brute force. After the sexual assault, which lasted for ten minutes, MARCIANO threatened her not to tell anybody or else he would kill her. RHIZA then went inside the comfort room and waited for the arrival of her aunt Viola Reyes, Normalita's sister. When Viola arrived, RHIZA immediately related her

ordeal.[5]

Before the incident, RHIZA seldom saw MARCIANO in the house because he came home late in the evening from work. In the succeeding days after the incident, MARCIANO religiously stayed in the house, constantly watching her and Viola. Viola called up Normalita to inform her about the rape incident. On 14 November 1996, when RHIZA had mustered enough courage to report the rape, she requested her aunt Viola and a certain Jenny Tamparo to accompany her to the Baesa Police Station in Quezon City to file a complaint for rape against MARCIANO. At the Police Station, RHIZA executed a Sinumpaang Salaysay.[6] Upon prior instructions from her Aunt Normalita, RHIZA, Viola and Stephen left the apartment and brought along with them their personal belongings because Normalita did not want her son to be involved in the case.[7]

On cross-examination, the defense counsel confronted RHIZA with a document entitled “Pinagsamang Salaysay ng Pag-uurong ng Reklamo”, [8] dated 18 November 1996, bearing her and Viola’s signatures. RHIZA explained that after the complaint was filed, she and her Aunt Viola were threatened by Emma Tan, sister of MARCIANO, that they will send them to jail and file charges against them for kidnapping Stephen and for qualified theft.[9] RHIZA declared that she was forced to sign said affidavit of desistance because of Emma’s threats. Later, however, threats notwithstanding, RHIZA pursued her complaint.[10]

The prosecution then presented Dr. Ma. Cristina B. Freyra, medico-legal officer at the PNP Crime Laboratory. She testified that she interviewed and conducted a physical examination on the person of RHIZA on 15 November 1996.[11] Her findings are contained in Medico-Legal Report No. M-1693-96,[12] pertinent portions of which read as follows:

FINDINGS:

GENERAL AND EXTRAGENITAL:

Fairly developed, fairly nourished and coherent female subject. Breasts are conical with pinkish brown areola and nipple from which no secretions could be pressed out. Abdomen is flat and soft.

GENITAL:

There is moderate growth of pubic hair. Labia majora are full, convex and coaptated with the light brown labia minora presenting in between. On separating the same disclosed an elastic, fleshy-type and congested hymen with deep healing laceration at 7 o’clock position and shallow healing laceration at 5 o’clock position. External vaginal orifice offers strong resistance to the introduction of the examining index finger and virgin size vaginal speculum. Vaginal canal is tight with prominent rugosities. Cervix is normal in size, color and consistency.

CONCLUSION:

Findings are compatible with recent loss of virginity. There are no external signs of application of any form of violence.

REMARKS:

Vaginal and peri-urethral smears are negative for gram negative diplococci and for spermatozoa.

Dr. Freyra further testified that lacerations are inflicted only on the first sexual contact. She noticed strong resistance when she inserted her examining finger in the hymen of RHIZA, more so when she inserted the speculum, which has a bigger diameter. This indicated that RHIZA’s hymen was not penetrated very often or that she seldom engaged in sexual intercourse. Dr. Freyra concluded that her findings were compatible with recent loss of virginity.[13]

The last witness for the prosecution was Mario Hermos, RHIZA's uncle. He declared that he was with RHIZA and Viola when the two were brought to Camp Karingal, and corroborated the testimony of RHIZA that Emma Tan told her to drop the rape case against MARCIANO; otherwise she would pursue the case for kidnapping filed against her and Viola.[14]

For the defense, MARCIANO testified first. He declared that on 10 November 1996, after coming home from the office at 7:00 p.m., he left their apartment with his friend Junilo Servida and another occupant of the apartment to play bowling. When they arrived home at 2:30 a.m. of the following day, 11 November 1996, he saw RHIZA and several occupants of the apartment drinking beer and brandy. He proceeded to the room of Stephen and slept there, until 7:00 a.m. Nothing unusual had happened in their apartment from the time he came home that night of 10 November until 14 November 1996 at 2:00 p.m. On said date, he suddenly felt uneasy and nervous while he was at his office. He decided to go home and when he arrived at the apartment, he saw that all his belongings and RHIZA, Viola, Lani and his son Stephen were gone. He looked for his son but did not see him anywhere, so he returned home. While resting that evening, he heard someone knock at the door. The door was forcibly opened and a man poked a gun at him. He saw several men in civilian clothes and they brought him to Camp Karingal where he learned that the men were police officers.[15]

The other witnesses for the defense were Leopoldo David, Junilo Servida, Police Officer Orecio Jurado, and Dr. Antonio Rebosa. Leopoldo, owner of the apartment where MARCIANO stayed, testified on the description of the apartment and the room where the rape incident was allegedly committed. Junilo corroborated MARCIANO's testimony that they played bowling on 10 November 1996, and that they saw RHIZA and other occupants of the apartment drinking beer when they returned later. He proceeded to the second floor of the apartment and slept in another room. MARCIANO, who was following him, slept in the room of his son Stephen.

Police Officer Jurado was presented to rebut the testimony of the prosecution witnesses that RHIZA and Viola were threatened and forced to sign the affidavit of desistance. He admitted, however, that before RHIZA and Viola signed the affidavit of desistance, there was a threat that they would be charged with kidnapping and qualified theft. Neither did he bring RHIZA and Viola before a notary public. He merely gave them a copy of the affidavit of desistance.[16]

Dr. Antonio Rebosa, a physician, explained the findings made by prosecution witness Dr. Ma. Cristina Freyra. He concluded that the healing laceration, as recorded in the medico-legal report of Dr. Freyra, indicated that the laceration could have been inflicted one to four days prior to the examination. In the absence of any other finding, the hymenal laceration was due to sexual intercourse.[17]

The trial court gave full faith and credence to the testimony of RHIZA. It characterized RHIZA'S narration of facts as straightforward, sincere, candid and consistent. Thus, in its challenged Decision,[18] the trial court decreed as follows:

WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused MARCIANO BERTULFO y GELEG, guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 335 of the Revised Penal Code, as amended, and the Court hereby sentences him to suffer the penalty of reclusion perpetua and to indemnify the private complainant Rhiza H. Oliverio the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages with costs against the accused.

SO ORDERED.

MARCIANO seasonably appealed to us from the adverse judgment.

In his Appellant's Brief[19], MARCIANO asserts that the trial court erred:

I

XXX IN CONCLUDING THAT THE ALLEGED THREATS MADE BY THE ACCUSED PREVENTED COMPLAINANT FROM RESISTING THE RAPE DESPITE THE FACT THAT THE PHYSICAL MAKE-UP OF THE APARTMENT, THE NUMBER OF OCCUPANTS THEREIN AND THEIR RELATIONSHIP TO THE COMPLAINANT MADE THE COMMISSION OF THE CRIME HIGHLY IMPROBABLE.

II

XXX IN CONCLUDING THAT THE COMPLAINANT WAS A TIMID AND SHY BARRIO LASS.

III

XXX IN ITS APPRECIATION OF THE MEDICO LEGAL REPORT.

IV

XXX IN NOT ACCEPTING THE AFFIDAVIT OF DESISTANCE DESPITE THE PRESUMPTION OF REGULARITY WHICH WAS NOT OVERCOME.

V

XXX IN HOLDING THAT THE ACCUSED ANTICIPATED THE REACTION OF THE COMPLAINANT AND HER RELATIVES.

VI

XXX IN NOT CONSIDERING THAT THE COMPLAINANT MAY HAVE BEEN ILL-MOTIVATED TO FILE THE COMPLAINT AGAINST THE ACCUSED.

VII

XXX IN NOT FINDING THAT THE ACCUSED WAS DENIED HIS CONSTITUTIONAL RIGHTS.

In the first six assigned errors, MARCIANO attacks the appreciation of facts by the trial court, particularly on the character, personality and credibility of RHIZA, her lack of resistance during the sexual assault, the delay in filing the complaint, the actions and reactions of MARCIANO, and the alleged motive behind the filing of the complaint for rape. He also argues that the medical report did not conclusively establish the fact of rape. Moreover, the place where the crime was allegedly committed was not conducive for the commission of rape because the risk of getting caught was extremely high.

Anent his last assigned error, MARCIANO alleges that he was denied his constitutional rights upon his arrest, and the illegality of his arrest was not at all touched by the trial court.

The Office of the Solicitor General (OSG) counters that credibility weighs heavily in favor of the evidence for the prosecution and that the affidavit of desistance cannot prevail over the same. The OSG asserts that there is no showing of improper motive on the part of RHIZA to falsely charge and testify against MARCIANO.

As to MARCIANO's last assigned error, the OSG avers that police officers are presumed to have regularly performed their official duties. MARCIANO failed to rebut this presumption. Even assuming that there was, indeed, a violation of his constitutional right, MARCIANO is estopped from questioning it at this stage. He should have raised it before his arraignment.

We affirm MARCIANO's conviction.

The issues raised primarily deal with the credibility of the prosecution witnesses and the appreciation of facts by the trial court. Settled is the rule that the factual findings of the trial court, especially on the credibility of witnesses, are accorded great weight and respect and will not be disturbed on appeal. This is so because the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion, the sudden pallor of a discovered lie, the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply; of the furtive glance, the blush of conscious shame, the hesitation, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[20]

This rule, however, admits of such exceptions as where there exists a fact or circumstance of weight and influence which has been ignored or misconstrued by the court, or if the trial court has acted arbitrarily in its appreciation of the facts.[21] These exceptions are not present in the case at bar.

We cannot sustain MARCIANO's insinuation of ill-motive on the part of RHIZA. A lass of tender age would not concoct a tale of defloration and consequently subject herself to an examination of her private parts, undergo the trauma and humiliation of a public trial, and embarrass herself with the need to narrate in detail how she was raped, if she was not in fact raped.[22]

MARCIANO's argument that RHIZA bore no injury is irrelevant. In proving rape, it is not necessary that the act was committed with genital injury. In fact, a medical examination is not indispensable in a prosecution for rape.[23] Nonetheless, the testimony of Dr. Freyra, and her findings conclusively supported the testimony of RHIZA that she was sexually assaulted. Dr. Freyra opined that RHIZA was no longer a virgin and had sexual intercourse about one to four days prior to the day she was examined on 15 November 1996, exactly five days after the incident on 10 November 1996.

Rape is committed when intimidation is used on the victim. Intimidation, which includes coercion, is a relative term, depending on the difference in age, size and strength of the parties, and their relationship. It can be addressed to the mind as well. For rape to exist, it is not necessary that the force or intimidation employed be so great or be of such character that it can not be resisted. It is only necessary that the force or intimidation be sufficient to consummate the purpose of the accused. Intimidation must be viewed in the light of the victim's perception and judgment at the time of the rape and not by any hard-and-fast rule. It is, therefore, enough that it produces fear - fear that if the victim does not yield to the bestial demands of the accused, something horrible would happen to her at the moment or thereafter, as when she is threatened with death if she should report the incident. Intimidation would explain the absence of any sign of struggle, which would otherwise indicate that the victim fought or tried to fight off her attacker.[24]

Likewise, failure to immediately report a rape incident does not diminish the victim's credibility nor undermine her charge of rape. The silence of a victim of rape or her failure to disclose her misfortune to the authorities without loss of material time does not prove that her charge is baseless and fabricated. It is a fact of life that the victim would rather privately bear the ignominy and pain of such an experience than reveal her shame to the world or risk the rapist's making good on his threat to hurt her. It is doctrinally settled that delay in reporting a rape case due to threats is justified. Here, RHIZA was threatened with death by MARCIANO.[25]

Furthermore, rape need not be committed in an isolated place, as MARCIANO contends. Lust is no respecter of time, place and kinship and may be committed even inside cramped quarters. Rape can be committed in places where people congregate, in parks, along the road, within school premises, inside an occupied house, and even in a room where other members of the family are also sleeping. There is no rule that rape can only be done in seclusion.[26]

The defense belabored the existence and evidentiary value of the affidavit of desistance executed by RHIZA and Viola before the police authorities. As explained by RHIZA, the affidavit was already prepared and she signed it only on account of fear and threat of being put to jail for kidnapping and qualified theft if she did not withdraw the rape case she filed against MARCIANO on 14 November 1996, four days prior to the signing of the affidavit of desistance. This fact was even admitted by defense witness Police Officer Jurado during his cross-examination. The latter further admitted that RHIZA and Viola did not appear before any notary public in connection with the preparation of such affidavit of desistance.

Affidavits of desistance are easily obtained for monetary consideration or through intimidation. Thus, they are treated with suspicion and reservation.[27] In this case, the affidavit of desistance must not be dignified. RHIZA, in her tender age, courageously declared in open court that she pursued the rape case and disregarded the affidavit of desistance because she wanted to obtain justice. Besides, she signed it under duress and had nothing to do with its preparation. The police officer who prepared it must be made to face the consequences of his misconduct.

The issue of failure by the arresting officers to inform MARCIANO of his constitutional rights requires strong and convincing evidence because of the presumption that the law enforcers acted in the regular performance of their official duties.[28]

MARCIANO's claim that he was arrested without a warrant is belatedly made. He should have raised the question on the validity of his arrest before his arraignment, but he did not. On the contrary, he voluntarily submitted himself under the court's jurisdiction by entering a plea of not guilty. Thereafter, he participated in the trial and presented his evidence. He is, thus, estopped from questioning the legality of his arrest. It is well-settled that any objection involving a warrant of arrest, or in the acquisition by the court of jurisdiction over the person of an accused, must be made before he enters his plea; otherwise, the objection is deemed waived. Besides, this issue is being raised for the first time by MARCIANO on appeal. He did not move for the quashal of the information. Moreover, the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial conducted free from error.[29]

Having been charged with simple rape only, with no modifying circumstance, the penalty that should be imposed on MARCIANO should be reclusion perpetua, the lesser of the penalties prescribed under Article 335, in relation to Article 63, of the Revised Penal Code, as amended by R.A No. 7659. The penalty imposed by the trial court is correct. And under current case law the trial court's award of P50,000, as indemnity, and P50,000, as moral damages, is likewise correct.

WHEREFORE, the Decision of 24 May 2000 of the Regional Trial Court of Quezon City, Branch 86 in Criminal Case No. Q-96-68588, finding MARCIANO BERTULFO y GELEG guilty of rape and sentencing him to suffer the penalty of reclusion perpetua and to pay the offended party RHIZA OLIVERIO P50,000, as indemnity, and P50,000, as moral damages, plus costs, is hereby **AFFIRMED** in toto.

SO ORDERED.

Puno, Kapunan, Ynares-Santiago, and Austria-Martinez, JJ., concur.

[1] Original Record (OR), 348; Rollo, 19. Per Judge Teodoro A. Bay.

[2] OR, 1; Rollo, 4.

[3] TSN, 2 April 1997, 13-14, 17, 29-30; TSN 15 April 1997, 12-13.

[4] Id., 7-8; Id., 20.

- [5] TSN, 2 April 1997, 6-11.
- [6] Exhibit "A," OR, 122.
- [7] TSN, 2 April 1997, 41-42; TSN, 15 April 1997, 25.
- [8] Exhibit "1," OR, 288.
- [9] The said charges filed against them were dismissed by the Quezon City Regional Trial Court, Branch 103, in its Joint Decision of 4 December 1998 in Criminal Cases Nos. 97-70360-61, entitled *People v. Reyes, et al.* (Exh. "1.")
- [10] TSN, 15 April 1997, 23-24, 27;
- [11] *Id.*, 5.
- [12] Exhibit "D," OR, 126.
- [13] TSN, 15 April 1997, 7, 10.
- [14] TSN, 29 September 1997, 5.
- [15] TSN, 12 May 1999, 5-6, 9-12.
- [16] TSN, 26 January 1999, 4, 6.
- [17] TSN, 14 December 1999, 4.
- [18] *Supra* note 1, 35.
- [19] *Rollo*, 52.
- [20] *People v. Abella*, 339 SCRA 129, 144-145 (2000).
- [21] *People v. Quejada*, 223 SCRA 77 (1993).
- [22] *People v. Gonzales*, 338 SCRA 678, 689 (2000).
- [23] *People v. Lagarto*, 326 SCRA 693, 727 (2000).
- [24] *People v. Ardon*, G.R. Nos. 137753-56, 16 March 2001.
- [25] *Id.*
- [26] *People v. Panganiban*, GR No.138439-41, June 25, 2001; *People v. Julio Francisco*, 344 SCRA 110, 120 (2000); *People v. Ardon*, *supra* note 24.
- [27] *People v. Bermudez*, 309 SCRA 124, 137 (1999); *People v. Mumar* 333 SCRA 221, 232-33 (2000).
- [28] *People v. Sy Bing Yok*, 309 SCRA 28, 41 (2000); *Dizon v. Court of Appeals*, 311 SCRA 1, 13 (2000); *People vs. Uy*, 327 SCRA 335, 350 (2000);
- [29] *Filoteo, Jr. v. Sandiganbayan*, 263 SCRA 222, 264 (1996), citing *People v. Lopez*, 254 SCRA 95,105-106, (1995); *People v. Gallarde*, 325 SCRA 835, 854 (2000).

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