

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VENTURA PELIGRO Y AMPO, ACCUSED-APPELLANT.

G.R. No. 148899. October 28, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated December 18, 2000, of the Regional Trial Court, Branch 17, Davao City, finding accused-appellant Ventura Peligro guilty of rape and sentencing him to suffer the penalty of reclusion perpetua and to pay the complainant, AAA, the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

The information against accused-appellant Ventura Peligro alleged —

That on or about September 21, 1999, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, wilfully, unlawfully and feloniously had carnal knowledge with complainant AAA through threat and intimidation and against her will.[2]

Accused-appellant pleaded not guilty to the crime charged, whereupon trial ensued.

The prosecution presented four witnesses, namely: complainant AAA, Barangay Kagawad Bienvenido Dana, Barangay Police Reynante Camirino and Medico-Legal Officer Dr. Samuel Cruz.

Complainant AAA testified that, on September 21, 1999, her husband was out working in Davao City, while her children were either in school or attending a Boy Scout training. At about 1 o'clock in the afternoon of the same day, she was pasturing her cattle on a hill about 300 meters from her house in Barangay Lamanan, Calinan in Davao City, when accused-appellant suddenly appeared and grabbed her by the shoulders and neck. He pushed her to the ground, removed his pants, went on top of her and had sexual intercourse with her. After ejaculating, accused-appellant stood up and flung P150.00 at complainant, warning her not to talk about the incident. According to complainant, when she reached home, she told her brother-in-law, Bienvenido dela Rama, what had happened to her. Together with her brother-in-law, she reported the matter to Barangay Kagawad Bienvenido Dana. The following day, she was examined by Dr. Samuel Cruz who then issued a medical certificate on his findings. On September 24, 1999, complainant executed an affidavit at the Calinan Police Station in Davao City, charging accused-appellant with rape.[3]

Barangay Kagawad Bienvenido Dana next testified. He said that, on September 21, 1999, at around 6 o'clock in the afternoon, complainant and her brother-in-law, Bienvenido dela Rama, reported to him that accused-appellant Peligro had raped complainant. He informed Kagawad Nicanor Pepito about the complaint and the latter ordered accused-appellant to be brought to his house. According to Kagawad Dana, accused-appellant admitted he had sexual intercourse ("ginamit") with complainant, but alleged that he paid her P150.00.[4]

Reynante Camirino, barangay police of Lamanan, Calinan, testified that, on September 21, 1999, at around 6 o'clock in the afternoon, he apprehended accused-appellant upon orders of Kagawad Nicanor Pepito on the basis

of a report made by Bienvenido de la Rama, complainant's brother-in-law, that accused-appellant had raped complainant. Accused-appellant was then presented to Kagawad Pepito and Kagawad Dana and thereafter brought to the police station.[5]

Dr. Samuel Cruz, the medico-legal officer who examined complainant, issued a medical report, dated September 22, 1999, which reads:

GENERAL PHYSICAL EXAMINATION:

Height: 154.0 cms. Weight: 53.0 kgs.

Fair[ly] nourished, normally developed, conscious, coherent, cooperative, ambulatory subject.

Breasts: Pend[ul]ous, soft. Areolae, light brown, 4.5 cms. in diameter. Nipples, light brown, protruding, 1.5 cms. in diameter.

No extragenital physical injuries noted.

GENITAL EXAMINATION:

Pubic hair, fully grown, sparse. Labia majora and minora, gaping. Fourchette, lax. Vestibule, pinkish, smooth. Hymen, reduced to carunculae myrtiformis. Hymenal orifice, admits a tube, 3.5 cms. in diameter. Vagina walls, lax. Vaginal rugosities, shallow.

CONCLUSIONS:

- 1) No evident sign of extragenital physical injuries noted on the body of the subject at the time of examination.
- 2) Hymen, reduced to carunculae myrtiformis.

REMARKS: SEMENOLOGY: Positive for Spermatozoa.[6]

Dr. Cruz said complainant's hymen was reduced to "carunculae myrtiformis," which meant that she had previous deliveries and that her vaginal rugosities were shallow, probably because of several pregnancies. Complainant was also tested positive for spermatozoa, but no finding was made as to its owner. According to Dr. Cruz, complainant told him that accused-appellant ejaculated outside her vagina. Thus, Dr. Cruz presumed that the spermatozoa found inside complainant's vagina belonged to complainant's husband with whom she had sexual intercourse on September 19, 1999.[7]

The defense presented accused-appellant Ventura Peligro as its sole witness. Accused-appellant testified that he knew complainant AAA because they had been neighbors since 1993. According to accused-appellant, at around 10 o'clock in the morning of September 21, 1999, complainant agreed to have sex with him for P500.00. Accused-appellant gave her P50.00 as advance payment, promising to deliver the balance in the afternoon. They met again at 1 o'clock in the afternoon of that same day near complainant's house, where they had sexual intercourse. Accused-appellant afterwards paid complainant P100.00, promising to give her the balance of P350.00 later that day. However, according to accused-appellant, at around 6 o'clock in the afternoon, he was apprehended by the authorities and taken to the house of Kagawad Dana, who informed him that complainant had accused him of having raped her. He denied the accusation and told Kagawad Dana that he and complainant had consensual sex and that he paid her per their agreement. Accused-appellant said that, when he was later taken to the Calinan Police Station, he again denied the rape charge and maintained that he and complainant engaged in consensual sex.[8]

On December 18, 2000, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, finding the evidence of the prosecution more than sufficient to prove the guilt of accused beyond reasonable doubt of the offense charged, pursuant to Republic Act 7659 amending Art. 335 of the Revised Penal Code, in Sec. 8 thereof, without any aggravating circumstance, proved by the prosecution, in the commission of the offense charged, accused VENTURA PELIGRO Y AMPO, is sentenced, to suffer a penalty of RECLUSION PERPETUA with all accessory penalties as provided for by law.

Pursuant to Art. 100, in relation to Art. 104 of the Revised Penal Code, accused Ventura Peligro is furthermore ordered to pay complainant, AAA, an amount of P50,000.00 by way of Civil Indemnity and another amount of P50,000.00 by way of moral damages. (People of the Philippines vs. Rolando Bacule; G.R. No. 127568, promulgated on January 28, 2000; People of the Philippines vs. Pacito Garces, Jr. G.R. No. 132368, promulgated on January 20, 2000).

SO ORDERED.[9]

Hence this appeal. Accused-appellant's sole assignment of error is that —

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE ON THE BASIS OF THE UNCORROBORATED AND INCREDIBLE TESTIMONY OF THE ALLEGED VICTIM.[10]

In deciding rape cases, this Court has laid down the following guiding principles, to wit: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where generally only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[11] Applying these principles, we find that the prosecution has failed to establish the guilt of accused-appellant beyond reasonable doubt.

Accused-appellant is charged with rape committed through threat and intimidation.[12] The question is whether accused-appellant had carnal knowledge of complainant as a result of the threat or intimidation employed by him.

In *People v. Las Piñas, Jr.*, [13] it was held:

[T]he test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Where resistance would be futile, offering none at all does not amount to consent to the sexual assault. It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance.

In this case, the prosecution failed to establish the existence of threat or intimidation that would engender a genuine fear in the mind of complainant as would effectively deter her from putting up a tenacious resistance, considering that: (1) accused-appellant, who was 44 years old, was unarmed; (2) complainant was mature, 36 years old, married and apparently physically fit; and (3) there was no proof whatsoever of great disparity in terms of physical strength or capacity between them.

Well-settled is the rule that where the victim is threatened with bodily injury, as when the rapist is armed with a deadly weapon, such as a pistol, knife, ice pick or bolo, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist.[14] In such cases, physical resistance need not be established since intimidation is exercised over the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety.[15] Thus, if resistance would nevertheless be futile because of intimidation, offering none at all does not amount to consent to the sexual assault so as to make the

victim's submission to the sexual act voluntary.[16]

However, none of these circumstances is present in this case. Complainant was 36 years old at the time the alleged rape took place. She weighed 53 kilograms and was about five feet tall.[17] She is a housewife with five children. It is thus incredible that complainant did not even attempt to resist accused-appellant, who was unarmed, if she in fact did not want to have sexual intercourse with him. Aside from her bare allegation that she was overpowered by accused-appellant and that she yielded to his desire because of fear that he might kill her, there is absolutely nothing in the records to show that complainant was forced to have sexual intercourse with accused-appellant. Indeed, it has not even been alleged that there was great disparity between complainant and accused-appellant in terms of physical strength, capacity or maturity such that she could not have put up any substantial resistance against him.

To show the improbability of complainant's testimony we reproduce below the pertinent portions thereof:

Q

On September 21, 1999 at about 1:00 o'clock in the afternoon, where were you?

A

I was pasturing my cow.

Q

Where?

A

In the upper portion of our house.

Q

How far is that when you were pasturing to your house?

A

300 meters.

Q

Where was your husband Arnold at that time when you were pasturing your cow?

A

He was at that time here in Davao City Poblacion.

Q

Your children where were they?

A

The younger children of mine were in school while the two elder were having a training in Boy Scout at Lamanan.

Q

While pasturing your cow at that time, tell the court what unusual incident that happened if any.

A

I was at that time following the cow, when I was all of a sudden held by Ventura. (witness pointing to the direction of the accused).

Q

When you said Ventura, are you referring to the accused in this case Ventura Peligro?

A

Yes, sir.

Q

Do you know him personally?

A

Yes, sir.

Q

Why?

A

Because he is our neighbor.

Q

When you said neighbor, how far is the house of Ventura Peligro to that of your house?

A

About 300 meters on the other side of the hill.

Q

So now again for purposes of identification, can you point it out clearly for the Honorable court, for the record?

A

(witness pointing to accused Ventura Peligro.)

Q

You said you were suddenly held by the accused, what part of your body [was] suddenly held by the accused?

A

My shoulder.

Q

After holding your shoulder, what did Ventura do if any?

A

He pushed me to the ground.

Q

How did he push you? Please demonstrate to this court.

A

He pushed me to the ground by holding with his left hand around my neck (witness demonstrating using her left arm pinning the neck of the Interpreter representing her when forcibly pushed towards the ground).

Q

How about his other hand?

A

He used his right hand by trying to remove my panty at that time.

Q

What were you wearing then aside from your panty?

A

I brought it with me.

ATTY. SANGO:

It is not responsi[ve].

FISCAL EVANGELIO:

Q

What did you wear, aside from your panty?

A

Short pants with garter.

....

FISCAL EVANGELIO:

Q

After the accused removed your short pants and panty, Mrs. dela Rama, while his one hand [was] holding you tightly, what did the accused do to you?

A

He also removed his pants.

Q

When removing his pants, what did he do?

A

He forcibly had his penis together with his two fingers inserted in my vagina.

Q

Please describe to this court, the position of the accused at that time, when he forcibly entered his penis to your vagina together with his two fingers?

A

He was on top of me.

Q

At that time when he forcibly inserted his penis to your vagina at that time, on that position you describe, what did you do?

A

I did not anymore resist, I was afraid that he might kill me.

Q

Thereafter he inserted his penis to your vagina, what happened next?

A

He ejaculated.

Q

Why do you say that he ejaculated?

A

Because I sensed that he ejaculated.

Q

After that, what did he do?

A

He stood up and he [threw] to me P150.00.

Q

What did he tell you before throwing to you P150.00?

A

He told me that I have to keep silent because if I will not, he will kill me. He further said, he will go back in the evening.[18]

Further, on cross-examination, she said:

Q

You testified that while the accused was pinning your neck [with] his hand and pushing you towards the [gr]ound, his right hand was used in removing your short pants?

A

Yes, sir.

Q

And you have all the chance to push him with your two hands, correct?

A

I was not able to push him away because he pinned down my both hands to my body. He had himself on top of my both arms which were pinned to my body.

Q

Did you not testify earlier while the hands of the accused was pushed in your neck, his right hand was removing your short pants?

A

Yes, sir.

Q

Now, you are saying that the two hands of the accused were holding both of your hands?

A

What I said, when he was already on top of me, he was sitting on my both arms pinning to my body.

Q

When the accused was already on top of you, he was still wearing his pants, correct?

FISCAL EVANGELIO:

Misleading, he already removed his pants.

ATTY. SANGO:

Q

You said the accused is pinning your two hands, he was on top of you already?

A

Yes, sir.

Q

And your short pants was not yet removed?

A

Yes, sir.

Q

And while he was on top of you, the hands of the accused were embracing the back of your body?

A

No.

Q

And when was the time when the accused removed your short pants?

A

I already fall down on my back and he was already on top of me.

Q

And your hands was still in cross position?

A

Yes, sir.

Q

That was the time when the accused removed your short pants?

A

Yes, sir.

Q

What part of the hand did accused used in removing your short pants?

A

His right hand.

Q

Your left hand is movable?

A

No.

Q

You want to impress the Honorable Court, that you never move your left hand at that time, when accused's right hand was allegedly removing your short pants?

A

Because he placed himself on top of my arms and pressed it firmly to my body.

Q

He was not kissing you?

A

He kissed me, when I was already facing down. My head was on the ground.

Q

You just moved your head up opening your neck and failed to move your hands?

A

No, because I was already afraid at that time.

Q

Now, when this short pants was removed, you still did not push back the accused to protect yourself from the alleged molestation?

A

No, because I was afraid that the man [will] choke me and he will hit my head.

Q

Is it not that you said, that the accused was holding your hands for you not to remove earlier, did you not say that?

A

He sat on my two arms.

Q

At that time the accused was allegedly holding your hands, the accused was still wearing his pants, is that correct?

A

Yes, sir.

Q

Now, after your short pants was allegedly removed, the accused also removed his pants?

A

Yes, actually he loosen his belt or open the zipper of his pants and stop his hands towards his penis and he forcibly his penis out, and let his penis pushed towards my vagina.

Q You said, he removed his belt, the belt was tightly worn by the accused?

FISCAL EVANGELIO:

Incompetent.

ATTY. SANGO:

Q

You want again to impress the Honorable Court, at the time he loosened his belt, his left hand was still holding your arm?

A

Yes, sir.

Q

Your left hand can move around because the right hand of the accused is unloosing his belt?

A

No.[19]

After the re-direct examination, the trial court asked some clarificatory questions, thus:

Q

On that date September 21, 1999, you said while you were pasturing your cow, he at once held you, did you see him before he held your shoulder?

A

Not yet.

Q

You did not see him before he held your shoulder?

A

I did not see him.

Q

Why, where were you looking at that time?

A

I was following the cow I was pasturing.

Q

You were following the cow and how did the accused held you, was he behind you or at your side?

A

In front of me.

Q

When he was facing you in front, you must have seen him before he held your shoulder?

A

He was hiding in the grassy portion.

Q

How tall was that grass where he was hiding?

A

There was a tree vine on it, that he was hiding.

Q

And that tree was ahead of you?

A

While I was following the cow, I don't know where he was at that time, all of a sudden [he] held my shoulder, pushed me towards the ground and placed himself on top of me.

Q

Did the accused jump at you?

A

Yes, sir.

Q

And then at once pushed your shoulders towards the ground?

A

Yes, sir.

Q

Did he say something while you were pinned to the ground?

A

Nothing.

Q

Until he manipulated to remove your short pants and panty, he did not say anything?

A

No, sir.

Q

How about you, you did not shout, when he pushed you to the ground and pinned your hands to your body?

A

No, I did not shout because I was afraid that he might choke me, he might strike on my head.

Q

Why, was he carrying any weapon at that time?

A

None.

Q

What are you afraid of?

A

I was afraid that he might choke me, as I have said a while ago his left hand was pinning my neck to the ground.

Q

But that did not prevent you from shouting for help?

A

I was afraid to shout at that time, apprehensive that my neighbors will not hear me and he will kill me.

Q

But you said that your brother-in-law arrived and you reported it to him, what happened to you?

A

Yes, sir.

Q

Was he the first person [to whom] you reported what happened to you?

A

Yes, sir.[20]

Based on her testimony, complainant apparently did not put up any resistance to ward off the advances of accused-appellant. She did not struggle nor attempt to shout for help. In fact, according to the findings of Medico-Legal Officer Dr. Cruz, who examined complainant the day after the alleged rape, there was no sign of extragenital physical injuries on the body of complainant.[21] Not a piece of complainant's apparel was torn or damaged as would evince a struggle on her part. These circumstances belie complainant's claim that accused-appellant had sexual intercourse with her without her consent.

In *People v. Ollamina*,[22] which involved a 15-year old girl who had accused a 24-year old neighbor of having raped her, it was held that "absent any logical explanation or justification, we believe that only a willing victim would passively allow herself to be ravished and her honor tarnished simply by reason of a verbal threat of an unarmed rapist." Furthermore, the failure of complainant to even attempt to escape from her supposed assailant or at least to shout for help despite opportunities to do so casts doubt on her credibility and renders her claim of lack of voluntariness and consent difficult to believe.[23] While it is true that women react differently in similar situations, it is unnatural for an intended rape victim not to make even a feeble attempt to free herself despite opportunities to do so. Such demeanor is inconsistent with that of the ordinary Filipina whose instinct dictates that she summon every ounce of her strength and courage to thwart any attempt to besmirch her honor.[24]

On the other hand, complainant's admission that accused-appellant gave her P150.00 after they had sex confirms the latter's claim that what they had engaged in on September 21, 1999 was consensual sexual intercourse. For if accused-appellant had warned her not to tell anyone that he had raped her, why should accused-appellant give her money? And if complainant had in fact been intimidated, she had not said what it was that allegedly gave her courage to denounce accused-appellant to the authorities.

We have not hesitated to affirm convictions for rape whenever the evidence supports the trial court's finding that the accused committed the crime. But we cannot in good conscience affirm accused-appellant's conviction in this case without making a mockery of our judicial system.

WHEREFORE, the decision of the Regional Trial Court, Branch 17, Davao City, is hereby REVERSED and SET ASIDE and accused-appellant is ACQUITTED of the crime of rape as charged and is ordered immediately released unless there are other legal grounds for his continued detention.

The Director of Prisons is directed to implement this Decision and to report to the Court immediately the action taken hereon within ten (10) days from receipt hereof.

SO ORDERED.

Bellosillo, (Chairman) and Quisumbing, JJ., concur.

Austria-Martinez, J., on leave.

Callejo, Sr., J., no part in the deliberations.

[1] Per Judge Renato A. Fuentes.

[2] Records, p. 1.

[3] TSN (AAA), pp. 3-9, July 7, 2000.

[4] TSN (Bienvenido Dana), pp. 3-7, 12-14, March 7, 2000.

[5] TSN (Reynante Camirino), pp. 9-11, January 14, 2000.

[6] Exh. A; Records, p. 42.

[7] TSN (Dr. Samuel Cruz), pp. 3-6, January 14, 2000.

[8] TSN (Ventura Peligro), pp. 3-9, 12-18, October 10, 2000.

[9] Decision, p. 9; Records, p. 69.

[10] Brief for the Accused-Appellant, p. 5.

[11] *People v. Perez*, G.R. Nos. 141647-51, March 6, 2002; *People v. Pajarillo*, G.R. Nos. 143755-58, February 20, 2002; *People v. Ollamina*, G.R. No. 133185, February 6, 2002; *People v. Bautista*, G.R. No. 123557, February 4, 2002; *People v. Villalobos*, G.R. No. 134294, May 21, 2001.

[12] Under Article 266-A(1)(a) of the Revised Penal Code, the crime of rape is committed by a man who has carnal knowledge of a woman through force, threat or intimidation.

[13] G.R. No. 133444, February 20, 2002 citing *People v. Dreu*, 334 SCRA 62, 69-70 (2000).

[14] *People v. Cristobal*, G.R. No. 144161, March 12, 2002; *People v. Añonuevo*, G.R. No. 137843, October 12, 2001; *People v. Bation*, G.R. Nos. 134769-71, October 12, 2001; *People v. Agüero, Jr.*, G.R. No. 139410, September 20, 2001; *People v. Ferrer*, G.R. No. 142662, August 14, 2001; *People v. Dagpin*, 346 SCRA 860 (2000).

[15] *People v. Edem*, G.R. No. 130970, February 27, 2002; *People v. Moreno*, G.R. No. 140033, January 25, 2002. See also *People v. Sagarino, Jr.*, G.R. Nos. 135356-58, September 4, 2001.

[16] *People v. Añonuevo*, G.R. No. 137843, October 12, 2001; *People v. Ittang*, 343 SCRA 624 (2000).

[17] Statistics taken from the Medical Certificate of Complainant AAA, dated September 22, 1999, and issued by Medico-Legal Officer Dr. Samuel G. Cruz. See Exh. A.

[18] TSN (AAA), pp. 3-4, 6-7, July 7, 2000.

[19] *Id.*, pp. 13-15 (emphasis added).

[20] *Id.* pp. 18-19 (emphasis added).

[21] See Exh. A.

[22] G.R. No. 133185, February 6, 2002.

[23] *People v. de la Cruz*, G.R. No. 137967, April 19, 2001; *People v. Malbog*, 342 SCRA 620 (2000).

[24] *People v. Ollamina*, G.R. No. 133185, February 6, 2002 citing *People v. Claudio*, 326 SCRA 813 (2000).

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