

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ARCADIO LOMIBAO, DEFENDANT AND APPELLANT.

G. R. No. 33788. February 12, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant was tried for rape by the Court of First Instance of Pangasinan on the following information:

"That on or about the 5th day of January, 1930, in the municipality of Mapandan, Province of Pangasinan, Philippine Islands, the above-named defendant entered the house of Juana Molina, a fifteen-year old girl, who was then alone in the house, and wilfully, unlawfully, and feloniously, by force and against her will, did lie and succeeded in having sexual intercourse with said Juana Molina.

"Contrary to law."

After due trial, the defendant was convicted of the crime charged, and sentenced to fourteen years, eight months, and one day of reclusion temporal, with the accessory penalties, to indemnify the offended party Juana Molina in the sum of P500, to acknowledge the offspring should there be any, and to pay the costs. The accused appealed from this judgment and contends that the evidence submitted by the prosecution was contradictory, inconsistent, and deficient; and that the facts established by the defense were corroborated by the only impartial witness for the prosecution.

The appeal, therefore, rests upon the credibility of the witnesses, and in consequence their testimony must be kept sight of.

The complaining witness testified that on the morning in question, the accused went to her house and finding her alone, grabbed her by the arm in an attempt to throw her down for the purpose of lying with her, and threatened to take her life if she made any outcry. They struggled for nearly an hour, until at last, becoming exhausted, she gave up, and the accused accomplished his purpose despite her resistance and outcries. While still in a compromising situation, Saturnino Molina, brother of the offended party, surprised the defendant. Upon being asked what he was doing to his sister, the accused pulled up his trousers and took to his heels, jumping through the window, which was rather low. Saturnino pursued him, but failed to overtake him. Arturo Espinosa testified that he saw the defendant jump out of the offended party's home that day, being pursued by Saturnino Molina.

The appellant testified that he had gone over to the girl's home for a towel, and she told him to go upstairs and get it, for she was busy cleaning a pot to cook rice in. He did so, and it was then that her brother Satumino Molina came in, inquiring if there was any rice to eat. He had already been displeased to learn that she had allowed the accused to enter the house, and when, in answer to his question, she told him there was no rice, he struck her several times with a bamboo stick. When he attempted to strike the accused, the latter fled.

Estanislao Pascua took the witness stand in behalf of the defendant, and to a certain extent corroborated his testimony. His account, however, has been flatly denied by both the complaining witness and her brother

Satumino; for the latter neither chastised her, nor was there any need of his going to her home for rice, as he lived elsewhere with his own family. Not only this, but Satumino denied having beaten his sister, and also that he had seen witness Estanislao Pascua at the house. And, furthermore, Faustino Quirimit, a rebuttal witness, stated that he was with Estanislao Pascua in a cockpit that day, in the municipality of Mangaldan, far distant from the barrio of Nilombot; that they had gone there together at about 7 or 8 in the morning, and remained until 3 in the afternoon.

On the other hand, in the medical certificate, Exhibit B, Dr. Bejar declared that he only found some scratches on the forehead and under the left shoulder blade in addition to a number of small bruises on both legs, but none of the injuries must have been produced upon the body of the complaining witness, had the statement of the defendant been true.

After hearing the witnesses for both parties, the court below gave more credence to the witnesses for the prosecution.

The trial judge said in his opinion:

"The story above related by the accused is indeed highly unbelievable. Nowhere in his testimony did he attempt to deny the charge of rape filed against him. He only tried to show that Saturnino Molina had a grudge against him, because the land that Saturnino Molina was trying to lease was not given by his father. Besides the rebuttal testimony of Saturnino Molina to the effect that he had never tried to lease the land of the accused's father because he (Molina) had his own lands to work, the attempt of the accused to make it appear that it was Saturnino who was the moving spirit behind the prosecution is, to say the least, ridiculous. On the other hand, we have the clear, satisfactory, and sincere manner in which the witnesses for the prosecution, especially the offended girl, Juana Molina, testified as to the commission of the crime."

We find no reversible error in the trial court's findings.

Counsel for the accused lays great stress on the fact that the complainant's dress was not exhibited, and insists that the evidence of the prosecution is not only contradictory, inconsistent, and deficient, but actually corroborates the facts established by the defense. This contention is untenable. The fact that the dress which the girl was wearing at the time of the alleged commission of the crime was not exhibited cannot be held against the prosecution, considering especially the circumstance that counsel for the defendant did not demand the presentation of this evidence to the trial court, when he could have done so.

The offended party was subjected to a long and trying cross-examination by the counsel for the accused in the course of which he attempted to elicit the fact that there was no bloody discharge from her genital organ. She replied that there was no bleeding, but stated positively that she had felt the defendant's genital organ when the same was inserted into her vagina. On this point, Dr. Bejar's certificate does seem somewhat deficient, for he has limited himself to the statement that when he examined the offended party's genital organ five days later, he found nothing abnormal in the vulva or vagina, nor any sign or trace of violence. But he testified before the court that her genital organ was in a state of complete physical development and capable to stand a carnal intercourse, so much so that the insertion of the penis into her vagina would not produce any injury, inflammation, or laceration of any kind. He did indeed testify in cross-examination that had the complaining witness been raped three days before he examined her, he would have found inflammation of the inner lips. But as a matter of fact, the examination of the genital organ of the offended party was made five days later and nothing abnormal was discovered. To prove a charge of rape, "it is no longer held to be necessary to prove a rupture of the hymen, though at one time this was deemed indispensable. Nor is it necessary to show that there was a laceration of the vagina which usually results from a first time copulation, especially with young girls." (Kenney vs. State, 65 L. R. A., 316; 22 R. C. L., 1178.)

In *People vs. Garcia* (G. R. No. 26150),^x the offended party was a girl 14 years old and upon examination of her private organ, no signs of violence were found therein. In sustaining the judgment of conviction this court held:

"It may be true that the offended person had theretofore had relations with other men, but that fact did not justify the appellant in having illicit relations with her against her will and consent and by force and violence. The law punishes those who have carnal knowledge of a woman by force or intimidation. Virginity is not one of the elements of the crime of rape."

The fact that the complaining witness cried out for help, her struggle for almost an hour against the appellant's lewd designs, the scratches on the forehead and under the shoulder blade, and the bruises on her legs, all show plainly the force and violence employed upon her, and that the appellant succeeded in having carnal knowledge of her against her will. This fact which appears of record constitutes the crime of rape, penalized by article 438, paragraph [1] of the Penal Code, with reclusion temporal. There

being no modifying circumstance to be considered, and the judgment appealed from being in accordance with law, it must be, as it is hereby, affirmed, with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

JOHNS, J.:

I dissent. The defendant should be acquitted.

[1] Promulgated January 15, 1927, not reported.

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