

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EUGENIO MOMO, DEFENDANT AND APPELLANT.

G. R. No. 35235. September 10, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The crime of which the defendant has been convicted is that of rape. Upon appeal he makes several assignments of error as committed by the court below in its judgment.

The first of these refers to the violence and intimidation alleged in the information, and which are, according to law the alternately essential elements of the offense charged. The defense contends that neither of these elements has been established. But, as the offended girl truthfully stated, she defended herself against the accused as long as she could, but he overpowered and held her till her strength gave out, and then accomplished his vicious purpose. These particulars suffice to show that the perverse act was accomplished through violence, against the girl's will, and in spite of her manifest resistance. As far back as May 14, 1878, the Supreme Court of Spain held (5 Viada, 5th ed., page 224, point 8) that when force is an element of the crime of rape, it need not be irresistible; "it need but be present, and so long as it brings about the desired result, all consideration of whether it was more or less irresistible, is beside the point."

The defense argues the improbability of the crime being committed in the place and manner stated by the complaining witness. The place appears to be set far enough away from the houses and out of sight, the view from those houses being obscured by a clump of bamboos. The place to which the complaining witness referred in the passage cited by the defense (pages 10 and 19, t. s. n.) is not the place where the crime was committed but that where the carabao she was looking after was tied. The testimony of Pascual Pitaliano, invoked by the defense, cannot be given credit, weakened and contradicted as it is by the testimony of Jacinto Almenar and Marcelo Hembra, who affirmed that the former at the time was not present where the alleged rape was committed.

The defense says that the testimony of the complaining witness stands uncorroborated. We do not find it so. The statements of her mother, to whom she went weeping after the outrage, her torn dress, and the result of the physical examination, are sufficient corroboration.

Counsel de oficio thinks the explanation given by Olimpia Arguelles for not having cried out, inconsistent. We find no such defect in her testimony. She testified that she lost consciousness through fright. With reference to the extravasation of the blood, it should be remembered that the examination was made the third day after the crime; and furthermore, the extravasation may have been beyond the scope of the examination.

Finally, the trial court is said to have erred in refusing to credit the exculpatory evidence presented by the defendant. We have carefully examined the testimony for the defense, and are unconvinced. We have already stated why we consider Pascual Pitaliano's testimony untrustworthy.

As for Juan Paine and Fausto Batucan, they are manifestly partial to the defendant. Although Juan Paine is a

relative of the complaining witness, the defendant is a relative of Pame's wife, besides being his agent in the tuba business. Fausto Batucan, in his anxiety to favor the defense, was led into testifying that so far was the accused from having committed the acts imputed to him by the complaining witness and her mother, that he refused to sign the record of the investigation, Exhibit 3 (page 40, t. s. n.) ; but when that document was presented in evidence, it bore the signature of the defendant, which was identified by Batucan himself (pages 91 and 92, ditto). The testimony of Hilarion Puntilan is improbable. The statement that the next day the mother of the complaining witness, while passing in front of his house, told him that she attached little importance to what had happened to her daughter, and that if she went to court about it, it was because she was induced to do so by Quell,—is far-fetched. We can find no reason why the mother of the offended girl should, on that occasion, gloss over the defendant's guilt.

As for the latter's testimony, we find it to be unsupported and contradicted in its main points. Alleging that he did not commit the crime charged, the defendant attributes the attitude of the complaining witness and her mother to Quell's influence, who also testified in rebuttal for the prosecution. It is true that Quell did not try to conceal his interest in the defendant's prosecution, whether out of a civic spirit or out of less exalted motives; but the record does not show that the accusation of the offended girl and her mother against the defendant was not true or spontaneous and moved by a just desire to see the person responsible for their disgrace punished. Therefore, although witness Fausto Batucan attempted to show that these women indicated that they preferred not to press their complaint, because it involved such a trivial matter—the record shows that it was the barrio lieutenant Batucan who was interested in terminating his investigation of the case by proposing an amicable settlement between the parties— it appears that the mother of the complaining witness left no stone unturned in order to secure the record of the investigation, Exhibit 3, and present it to the chief of police, thereby insisting upon her daughter's right, notwithstanding the fact that the contents, which she did not appear to know, did not include everything which she and her daughter had said to Batucan, the barrio lieutenant. Had she known its contents, we doubt very much whether she would have shown it to the chief of police.

The defendant states that it was not he but Gregorio Alcornoque who had unlawful intercourse with the complaining witness. Doctor De Veyra who made the physical examination found upon her person marks of violence indicating coition within the last five days, and that examination took place on November 8, 1930. The appellant sought to explain away those traces of violence by saying that on November 4, 1930, or two days before the act complained of, he surprised the offended girl and Gregorio Alcornoque in a compromising position. Not only did the complaining witness deny this, but Gregorio Alcornoque himself, who was presented as a witness for the prosecution in rebuttal and publicly admitted that he had sexual relations with Olimpia Arguelles, unmistakably and repeatedly assured the court during the trial that he was not with the offended girl on November 4, 1930, because he had broken off his relations with her some three months ago. (Testimony given on December 12, 1930.)

This physiological detail revealed by the physical examination, stands out as a mute but eloquent fact in the midst of other evidence in the case, pointing to the appellant as the perpetrator of the outrage in question.

We find no modifying circumstances in the case; but we note that the defendant should not have been sentenced to acknowledge the offspring, if there be any, because, being a married man, his civil status forbids it.

Wherefore, finding no reason in the record to alter the judgment appealed from except as above indicated, it is hereby affirmed in its entirety with the exception of the acknowledgment of the offspring, which is hereby cancelled, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, and Villa-Real, JJ., concur.

DISSENTING

IMPERIAL, J., :

The evidence, as I take it, has not established the appellant's guilt beyond a reasonable doubt. I shall proceed to analyze it.

The only direct testimony for the prosecution was furnished by Dr. Emilio de Veyra, who is president of the sanitary health district, the alleged victim Olimpia Arguelles, and her mother Simona Arguelles. The exhibits are of little importance for, by themselves they do not prove the crime charged, being no more than the medical certificate, the dress of the complaining witness, and a sketch of the place.

The first witness, a physician by profession, testified that at 10 o'clock in the morning of November 8, 1930, at the request of the chief of police of Jaro, Leyte, he made a physical examination of Olimpia Arguelles; that he found no lesion or mark of violence on her body except in the vulvar region; that the labia majora were tumid, and the labia minora slightly affected with hypersemia; that a digital insertion into the vagina met with no obstruction; that a spermatic substance was extracted from the vagina; that the hymen was apparently lacerated and had probably been so a long time before that week; that coition had occurred some days since.

Olimpia Arguelles testified in substance as follows: That early in the morning of November 6, 1930, before going to the fields, her mother told her to take the carabao to a certain pool which served for a wallow; that after her mother had gone, she set out for the place mentioned, and after having gone some 100 and 50 yards from her home, and 20 yards from the place where the animal was, the appellant suddenly arrived upon the scene, rushed at her, caught her by both arms, felled her and laid himself upon her; he then raised her garment and in spite of her resistance and her efforts to get away, he at last succeeded in having intercourse with her; that she was able to cry out then, and the appellant ran away; that as soon as she was free, she took the carabao to the wallow, and then rejoined her mother saying she wanted to go home because the appellant had abused her; that her mother went with her and on hearing what had happened, both of them went to report the crime to the barrio lieutenant; that they went to the house of Juan Pame, who they thought was the barrio lieutenant, but were there informed by the latter that Fausto Batucan was the barrio lieutenant; that at the latter's house they related what had taken place; that as Batucan wanted to settle the matter amicably, with a slight admonition and warning to the appellant not to molest the girl again, to which the two women objected, and went to the house of the chief of police, Macario G. Lagrado.

Simona Arguelles testified almost similarly to her daughter, after she had heard from the latter what had happened, Her daughter, she said, came to her weeping, and told her she had been outraged by the appellant; that both of them went to the homes of Pame, the barrio lieutenant Fausto Batucan, and the chief of police Lagado; that her daughter had already related to them what had occurred, and that finally it was chief of police Lagado who listened to them.

I shall first take up the testimony of Dr. De Veyra. His finding that the complaining witness had intercourse a few days prior to November 8th, probably on one of the days of the preceding week, is directly corroborated by the testimony of the appellant and of Gregorio Alcornoque, an 18-year old youth, called to the stand by the prosecution to furnish rebuttal evidence, who stated that he had had such intercourse with the complaining witness, but did not remember the date of the last. (Page 123, transcript of the stenographic notes.) This witness had been presented by the prosecution to impugn the appellant's statement that he had seen the offended girl and Alcornoque in the carnal act in the afternoon of November 4, 1930, and that his teasing her about it was one of the reasons why she was peeved at him. During the direct examination this witness apparently testified in favor of the

prosecution, denying the imputation of unlawful intercourse, but under cross-examination he plainly admitted having had carnal relations with the complaining witness, and that he had at first denied it in the direct examination because one John Quell had instructed him to do so. Thus the defense of the accused that it was not he but Alcornoque who lay with the complaining witness, is corroborated by at least one witness for the prosecution.

Now for the testimony of the complaining witness and her mother. It should be noted above all, that the former's is not corroborated by any direct evidence or eye-witness. Their statement that they told Pame and Batucan that Olimpia had been raped by the appellant is openly contradicted by the testimony of said Pame and Batucan, who testified that they had no sooner spoken to the offended girl and her mother, than the former cut in saying that the only thing that had happened was that the appellant had hugged her and took hold of her breasts; Batucan admitted that the girl also said that the accused had attempted to throw her to the ground. The testimony of Pame and Batucan is strongly corroborated by Exhibit 3 of the defense which, according to them, contains the statements made by the complaining witness, although it was not subscribed by her. This document, written by Pame under the direction of the barrio lieutenant Batucan, positively states that the offended girl, Olimpia, testified in her mother's presence that the only thing the appellant did was to hug her and take hold of her breasts; that upon being insistently interrogated whether she had been raped or not, she answered in the negative. It is worth mentioning that although these statements of the complaining witness did not impute the serious crime of rape, the appellant Momo at first refused to sign the document or memorandum, as the barrio lieutenant calls it, because he insisted that he had only tried to startle her, by holding her by the shoulders. That the document contained the statements of the complaining witness and that both she and her mother Simona knew it, is proved by the significant circumstance that the latter took it from Batucan's house while he was absent, by representing to his wife that it belonged to her. Simona thus took possession of the document because she believed it was evidence that she and her daughter might use to advantage, and in this belief she delivered it to the chief of police Lagado.

Now, what circumstances determined the change of attitude of mother and daughter? The record shows: That after the complaining witness had repeatedly made the foregoing statements to Pame and Batucan, and after Simona had also told Hilarion Pontilan, as soon as she saw him on coming out of the barrio lieutenant's house that the affair was of no consequence but they had been delayed because they had insisted upon not taking the case to the courts; that one John Quell, a resident of the barrio, spoke to the girl and her mother, advising them not to give up their rights, but to take the case to the justice of the peace of Jaro accusing the appellant of the crime of rape. From that time on mother and daughter did not rest until they had taken the case first to the chief of police, and then to the justice of the peace. Let us turn to what Quell testified upon this point:

"Q.

Did you advise or induce Simona Arguelles to denounce Eugenio Momo on that night, November 6th, in any part of the barrio of Jiagsan?—A. Not in the barrio of Jiagsan, but in my house.

"Q.

Why so? When did Simona Arguelles go to your house?—A. Between nine and half past that night she came with Raymundo Catre and his wife, when I was already in bed. My wife called me.

"Q.

Why did Simona Arguelles go to your house?—A. She wanted advice.

"Q.

Why did they ask you for advice?—A. Because that night Simona had been to the barrio lieutenant to denounce Eugenio Momo for having raped her daughter; but the lieutenant tried to settle the matter which they would not agree to.

"Q.

And what advice did you give them?—A. I told them to go to the chief of police of Jaro.

"Q.

You advised them to prosecute the case because you had a grudge against Eugenio Momo because he had not paid you the P1.25 which he owed you for beef which he bought of you, and because he injured one of your cattle?—A. Yes, sir. But he does not owe me P1.25, he owes P1.75 from the year 1926. I should not have remembered this amount if it had not been mentioned in his testimony. * * *

"Q.

And do you personally bear Eugenio Momo any ill will? A. I am disgusted with him. He is not a man but a real animal, a beast. He is a pest among the women.

"Q.

Why do you say that?—A. Because he has already molested three or four women. There have been complaints against him lodged with the lieutenant in charge, but they were all dismissed because Eugenio Momo is a nephew of the lieutenant's wife, and is a tuba distiller; furthermore, the lieutenant has tuba for sale in front of his house, and between the two of them they are making money." (Pages 103, 104, and 105, transcript of the stenographic notes.)

It can be readily inferred from a reading of this testimony that the witness really advised Simona Arguelles to prosecute the case and accuse the defendant of rape, and that he had grounds, whether reasonable or not, for having a grudge against the appellant herein. This, in my opinion, explains the change of attitude on the part of the offended girl and her mother, as well as their unwarranted persistence in prosecuting the appellant for the crime of rape, which he has not committed.

I said that the testimony of the complaining witness, the only direct evidence of the prosecution, cannot be the basis of a conviction for so serious a crime as it imputed to the appellant, because it is not corroborated by any other direct and positive evidence; and it may be added that still less probative value can be attached to such testimony, when it appears, as in this case, to be vitiated by the advice of an individual who has frankly admitted that he hates the appellant. "A conviction for rape can not be had upon the uncorroborated and contradicted testimony of the complainant alone." (U. S. vs. Flores, 6 Phil., 420.)

This is what has compelled me to dissent from the majority opinion, and I think the appellant should be acquitted.

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