

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SOTERO DELFINADO (ALIAS LEON), DEFENDANT AND APPELLANT.

G.R. No. 43292. August 03, 1935

Ponente: RECTO, J.

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RECTO, J.:

The accused is charged in the information with having raped his sister-in-law Romana Simora, a virgin, twelve years and eight months of age. He was found guilty of the crime charged and sentenced to an indeterminate penalty of eight years of prisidn mayor as minimum to seventeen years, four months and one day of reelnsUn temporal as maximum. He was also sentenced to indemnify the offended party in the sum of P500 and to pay the costs. From that sentence the accused appealed and the cause is now before the court for review.

The fact which gave rise to this proceeding was reported to the municipal authorities of San Quintin, Pangasinan, by Marta Bermudez, mother of the alleged offended party, on the afternoon of November 25, 1934, on which date, according to the prosecution, the act was committed. On the following day, November 26th, a physical examination of Romana was made by Dr. P. T. Mananquil, president of the 15th Sanitary Division of the Province of Pangasinan, who issued the following certificate (Exhibit A) :

"I hereby certify having examined the genital organs of Romana Simora, of the barrio of Cabalawangan, San Quintin, Pangasinan, P. I., which showed five radiated healed lacerations on the hymen, two on the right side and three on the left, said lacerations indicating in my opinion a defloration, having found, however, no further signs of violence such as scratches, contusions, etc. on any part of her body."

Romana testified that at about twelve o'clock noon on November 25, 1934, while she was in the kitchen of their house situated in the barrio of Cabalawangan, of the aforesaid municipality and province, the defendant, who is the husband of her sister Marciana and lived in the adjoining house, approached and embraced her and by means of threats, intimidation and violence, threw her down and had sexual intercourse with her; that she tried to cry out but was prevented by the accused, who gagged her with a piece of cloth; that she tried to free herself from her assailant but failed because of the latter's superior force; that due to her resistance her dress was torn; that as a result of the sexual act she suffered injuries on her genital organs, accompanied with hemorrhage, and her dress was stained with blood; that while the accused was performing the sexual act, her brother Jose, 15 years of age, arrived and asked them what they were doing, to which she answered that the accused was raping her. She also testified that on that occasion there were no other persons in the house except her small brother three years of age and the accused, her mother having gone out to harvest palay and her brother Jose was out on the road.

This testimony of Romana Simora is corroborated by her brother Jose with respect to the sexual act; not so, however, in so far as the act was performed against her will and by means of intimidation and violence. As a matter of fact, Jose Simora saw nothing except the sexual act between the accused and Romana; he noticed nothing which would indicate that the carnal act was being performed against her will. It is true that when the

witness was asked as to what he saw when he arrived in the house, he answered that his brother-in-law was raping his sister, but it is clear that such answer, strictly speaking, did not express a fact but a legal conclusion, the witness believing perhaps that rape and sexual act are one and the same thing, which is not strange, bearing in mind the age of the witness and the circumstance that it was the first time he saw such an act. That all the boy Jose Simora saw was the sexual act, performed with apparent mutuality between his sister and the accused, without any indication of violence on the part of the latter, may be inferred from a portion of his testimony where he states that the movements which he saw his sister and the accused perform were characteristic of the sexual act (pp. 29-30, transcript of oral evidence). His subsequent rectification, saying that the movements of his sister showed that she wanted to free herself from the accused, cannot be taken into consideration by the court, for obvious reasons.

Furthermore, the circumstance mentioned by the witness that when he caught the accused having sexual intercourse with his sister and asked them what they were doing, the latter could not answer (p. 30, transcript of oral evidence); that his sister then appeared very much upset (Id., id.), and that he reprimanded her in the act for what she had done (36, id.), does not indeed harmonize with the theory of the prosecution that the accused and Romana were performing the act against the latter's will.

The fact that the witness Jose Simora did not notice the bloodstains on Romana's dress which were mentioned by her in her testimony, is very significant, bearing in mind that this witness said that he had examined the dress and saw that the same was torn. Likewise, it is worthy of note that the witness denied Romana's testimony that she had shown him her private parts, injured and bleeding. Finally, if Romana's testimony is true that the accused gagged her to prevent her crying out, we are at a loss to understand why Jose not only did not notice this detail but gave the court to understand otherwise, as may be seen from this part of his testimony.

"Q. You saw the face of your sister very well?—A. Yes, sir.

"Q. She could have answered you when you asked, 'what are you doing there?' if she had wanted to?—A. Yes, sir.

"Q. Because there was nothing that might in any way have prevented her from talking?—A. Yes, sir." (B. 36, transcript of oral evidence.)

There is only one detail in Jose Simora's testimony tending to establish the existence of a circumstance indicating that the accused employed violence in order to have carnal intercourse with Romana, said circumstance consisting in the rents in her dress which were noticed by the witness. The truth, however, is that the witness does not specify the time or the occasion on which he saw said rents and therefore his testimony does not exclude the possibility that Romana herself may have made those rents after the sexual act, at a moment when her brother was not present, in order to have an ostensible excuse and vindicate herself before the eyes of her mother and brother.

But Romana Simora's assertion that force and violence had been used by the accused in order to have sexual intercourse with her, has not only been not corroborated, but her testimony on this point is openly contradicted by other indisputable facts of record. Romana states that as a consequence of the force and violence employed by the accused and of the sexual intercourse he had with her at about noon of November 25, her private parts were injured and bled. However, the medical examination performed on the following day, November 26th, disclosed that although it is true that her private parts were injured, the injuries could not have been caused on the previous day because they were entirely healed, the medical certificate of Doctor Mananquil stating that the coition which produced said injuries must have taken place six days or more previous to the date of his examination. Said physician further stated that he found no signs of violence, such as scratches, or contusions on Romana's body.

If this certificate is true and correct, and it must be so presumed, not only because it is not impeached upon

any valid ground in law but also because it was presented in evidence by the prosecution itself, then the theory of the prosecution becomes untenable, notwithstanding Romana Simora's effort to substantiate the same with her testimony, stating that the accused by means of intimidation and force satiated upon her his lascivious desires at about noon on November 25th, causing injuries to and hemorrhage of her private parts. Romana may have been raped by the accused on the day in question, and this is not inconsistent with the finding of the government physician, but not with the injuries—lacerations and hemorrhage—which according to Romana were caused by the act on her genital organs.

Counsel for the prosecution in the lower court tried to harmonize the discrepancy between Romana's testimony and Doctor Mananquil's medical certificate, by leading her with an appropriate question to state that six days prior to the day the offense was committed she had been a victim of the violent lust of the accused. This attempt of the prosecuting attorney was objected to by the defense because the information only alleged one rape, supposed to have been committed on November 25th. At first the court allowed the question, and the witness hastened to answer that six days before, she had been raped by the accused. When the prosecuting attorney, in his attempt to build up a new theory, asked other questions on this new matter he was ruled out by the court upon objection of the defense. In our opinion the trial court acted correctly because the questions of the prosecuting attorney did not accord with any allegation in the information. This incident has once more shown the intrinsic weakness of the offended party's testimony, because if it were true that she had been raped for the first time by the accused six days before the day in question, indeed, her subsequent conduct failed to show it inasmuch as she neither revealed that fact to her mother or brother, nor did she do anything to forestall at the first opportunity a repetition by the accused of such heinous act. Inasmuch as, with respect to the alleged rape, there is only the testimony of Romana, which in the opinion of this court is seriously tainted with falsehood, we shall now proceed to state the reasons why, under the circumstances of the case, a judgment of conviction will not be justified.

From an examination of the numerous decisions rendered by this court in cases similar to the one under consideration, it may be laid down as a general rule that a judgment of conviction for the crime of rape cannot be based on the lone, uncorroborated testimony of the alleged offended party, unless said testimony be clear, positive and convincing, or supported by other undisputed facts and strong circumstantial evidence disclosed by the record. Thus in the case of *United Spates vs. Huertas* (39 Phil., 440), the testimony of the offended party was corroborated by the testimony of the physician who examined her on the day following that on which the offense was committed, said medical certificate stating "that the offended girl had bruises on the back of her left hand and on her upper lip; that her virginal membrane had been recently perforated apparently by the insertion of the virile member, which tearing of said membrane was still fresh, although it was not bleeding; and that bloodstains were found on the skirt which the girl was wearing at the time she was examined."

But in the cases of *United States vs. Flores* (6 Phil., 420) ; *United States vs. De la Paz* (9 Phil., 738); *United States vs. Magsisi* (9 Phil., 739) ; *United States vs. Tan Teng* (23 Phil., 145) ; *United States vs. Flores* (26 Phil., 262) ; and *United States vs. Ramos* (35 Phil., 671, 677), the accused were acquitted because the only evidence of their guilt was the uncorroborated, contradictory, and unconvincing testimony of the alleged victims. The following, quoted from the decision of this court in the last mentioned case, *United States vs. Ramos*, *supra*, rings true, if applied to the evidence in the instant case:

"The books disclose too many instances of false charges of rape, attempted rape, and kindred offenses to permit the courts to enter a judgment of conviction of a crime of this nature without having in mind the possibility that the complaining witness may have been actuated by some sinister motive in bringing the charge. On the other hand, the only evidence on which convictions of these heinous offenses can be had is frequently the uncorroborated testimony of the injured woman, and when corroboration is available, it is usually limited to the testimony of intimate friends and relations who have been attracted to the scene of the

crime by the cries of the victim. It becomes necessary, therefore, for the courts to exercise the most painstaking care in scrutinizing the testimony of the witnesses for the prosecution. These witnesses are usually women who are not always able to give a clear and correct account of the commission of the crime, and not every petty discrepancy or inconsistency in their statements will justify the rejection of their testimony. In such cases the timidity and ignorance of the witnesses must be taken into consideration, or the perpetrators of these heinous offenses will in most instances go unpunished. On the other hand, convictions cannot and should not be sustained when it appears that these witnesses have willfully and knowingly testified falsely as to any matter developed at the trial; or where they are in direct conflict as to any of the circumstances to which they testify, when the conflict arises in regard to a matter about which there could not well be a mistake, despite the timidity or ignorance of the witnesses, unless one or other of the witnesses was knowingly and willfully testifying falsely. And these grounds for declining to accept the evidence for the prosecution become much stronger when the story told by the complaining witness is inherently improbable, as in the case at bar. In such cases the courts are justified in looking with suspicion on the testimony of the witnesses for the prosecution; and unless their testimony rings true at every point, and is clear, definite and convincing throughout, it should be rejected.

"The mere apparent improbability that the alleged crime could have been committed in the manner and form described by the witnesses for the prosecution does not necessarily justify an acquittal if the evidence submitted by the prosecution is otherwise clear, satisfactory and convincing, unless the degree of improbability is such as to amount to a practical impossibility—but in the absence of clear, satisfactory and convincing testimony in support of the charge, a judgment of conviction will not be sustained in the face of the apparent improbability that the crime could have been committed as charged. Any reasonable ground for suspecting the good faith of the witnesses for the prosecution or their desire to tell the truth, the whole truth, and nothing but the truth, will be sufficient in such cases to justify and require an acquittal." (U. S. vs. Ramos, 35 Phil., 671, 677.)

The, prosecuting attorney suggests that Romana's mother would not have denounced the accused on the afternoon of the day in question had the rape not been a true and real fact. We believe that the mother acted in good faith in making that complaint, because it is not strange that she believed the statements of her children, Jose and Romana, that in her absence the accused had raped the latter. To extricate herself from the difficulty, and because it was impossible to conceal the fact by reason of its discovery by her brother, the story of the rape must have afforded Romana an excellent means of self-justification. The disappearance of the accused for several days from the house where he lived, which adjoined that of Romana, was considered by the trial judge as indicative of his guilt. We do not hold the same opinion; such disappearance, we think, only shows that the accused, seeing that his infamous act was discovered, and unable to stand the belated reproaches of his conscience, wanted to flee from the presence of the persons upon whom he had inflicted such a heinous offense.

Therefore, without discussing whether or not prior to the day in question the accused had succeeded in having carnal knowledge of Romana against her will, we conclude that, if on said day the carnal act was repeated, there is nothing in the record, however, to show that the same was consummated without Romana's consent.

The act perpetrated by the accused, whereby he gratified his lascivious desires on the person of his sister-in-law Romana Simora, who has scarcely arrived at the age of puberty, despicable and odious as it is, because that act constitutes a serious offense against good morals, still there is no proof showing beyond a reasonable doubt that he performed said act against her will and, consequently, there is no juridical fact, in relation to the information, deserving of penal sanction. Accordingly, judgment is rendered absolving the accused and¹ ordering his immediate release from confinement, with costs de oficio.

Avanceña, C.J., Abad Santos, Hull, and Vickers, JJ., concur.

Judgment reversed and defendant acquitted.

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