

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ILDEFONSO ABONADA Y LIBRE, ACCUSED-APELLANT.

G.R. No. 50041. January 27, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Is there rape despite the intactness of the hymen and the absence of spermatozoa in the private parts of the victim? This is the question that confronts us in this prosecution for rape said to have been committed as follows:[1]

That on or about November 5, 1975, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with the undersigned complainant, who is 19 years of age, against her will.

Contrary to law.

Upon arraignment, the accused-appellant Ildefonso Abonada y Libre, entered a plea of "NOT GUILTY".[2] Thereafter, trial proceeded and on November 20, 1978, the trial court found the accused guilty beyond reasonable doubt of the crime of rape. The decretal portion of the decision[3] reads:

WHEREFORE, the accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA; to pay the complainant Aida Genovia the sum of P5,000.00 as moral damages without sub-sidiary imprisonment in case of insolvency and pay the costs.[4]

After the denial[5] of his motion for reconsideration, the accused appealed to this Court by filing a Notice of Appeal signed by Citizens Attorney Juan A. Zamora of the Citizens Legal Assistance Office, Region No. XI, at Davao City, dated January 2, 1979.

The diametrically opposed versions of the prosecution and the defense are summarized by the trial court in its decision, thus:[6]

The complainant testified that at about 4:30 in the afternoon of November 5, 1975, while she was walking from Matina Barangay High School to Matina Crossing accused stopped his dump truck and invited her to get on board. Since the face of the accused was familiar to her as he was her neighbor at Barrio Obrero, Davao City, complainant boarded the dump truck with the thought that she could save her jeep fare in going home. Instead of proceeding to Davao City poblacion, she noticed that the truck proceeded towards Ulas which was away from the Davao City poblacion and when she inquired from the accused he told her not to worry as he was going to take his snack at Ulas Crossing which will take only a short time. At Ulas Crossing, accused invited complainant and thereafter both boarded the truck but instead of proceeding to Davao City, accused went away from the city proper to Mintal. Upon inquiry by the complainant, accused told her that he will wash his truck at Ulas River.

Accused drove his truck to the river bed of Ulas river in an area where it appears that there was no habitation.

When accused was through washing the truck, the complainant noticed what appeared to her as the bad intentions of the accused so she jumped out of the truck. She then heard the accused telling her that he will shoot her if she will run away. She continued until she reached the portion of the river where the water was knee-deep and where accused overtook her and forced her to board the truck.

Once inside the truck, the accused closed the door and forcibly pulled down her skirt, pulled off her blouse, and proceeded to undress her by taking off her "falda", shorts and panty. Complainant's falda or skirt was marked as Exhibit "B", her blouse as Exhibit "C", her shorts as Exhibit "D", her panty as Exhibit "E" and her handkerchief as Exhibit "F".

Complainant testified that Exhibits "B" and "E" were torn during this time which also saw the destruction of an "automatic" or a button on Exhibit "C". After undressing her, accused with one hand pressed her down the truck's front seat, pushed open her legs while the other hand, began touching her private parts. Accused after inserting his finger into complainant's generative organ pushed his penis in but was not able to finish having sexual intercourse because complainant was able to free herself.

The accused started the truck and drove it to a coconut grove 50 meters away beside the river where there was a small nipa hut. He stopped the truck and pulled the complainant and forced her to enter the uninhabited nipa shack and once inside, accused pushed her down an old bamboo bed and lay on top of her. Although he succeeded in inserting his penis, the accused was not able to finish the sexual intercourse because of the continued struggle of the complainant. The accused then stood up, berated her, telling her to cooperate so that they can go home right away. After urinating at the door of the hut, accused resumed his effort to have coition and this time he succeeded. Complainant felt the pain of the intrusion in her private parts and smelled a different odor after the discharge of the accused which was spilled outside of her organ. Thereafter, the accused sat on a broken chair complaining of a headache and it was at this moment that complainant begged to be delivered to her home. Accused after making her promise and agree that she will not tell anybody what happened to her took her home to Salmonan, Davao City at about 11:00 o'clock that evening of November 5.

In her cousin's home when asked, she related everything. So on the following morning the complainant, together with her cousin, Erlinda Racho, reported the incident to the Davao City Police. The next day, November 7, again accompanied by Racho she had herself examined by Dr. Mita Bernardino at the Davao Regional Hospital.

Erlinda Racho, witness for the prosecution, testified that the complainant Aida Genovia had been staying with them at Salmonan, Quezon Boulevard, Davao City, since June, 1975 at the opening of the classes. On November 5, 1975 she arrived at about 11:30 in the evening and Racho noticed her hair to be disarranged, her dress dirty and torn. When asked, the complainant started crying and informed her cousin that she was raped by the accused. In the early morning of November 6, 1975, while they were preparing to go out, Racho together with the complainant saw the accused standing by a house located near their house in Salmonan, Davao City. Because of the threat of the accused to kill her, it was only at about 1:00 o'clock in the morning of November 6, that she, accompanied by Genovia, went to the Davao City Police and on November 7 she again escorted the complainant to the Davao Regional Hospital for examination.

The accused Ildefonso Abonada y Libre, testified that in the afternoon of November 5, 1975, while he was resting, at the vicinity of Matina Barangay High School where he was hauling gravel, complainant approached him. When asked whether she could ride with him in the dump truck, he readily consented. Complainant seated herself in the front seat on the right side of the accused. While they were on their way to Matina crossing, accused immediately made lewd advances by telling complainant that he would like to have sexual intercourse with her. His request was met with silence. At Ulas crossing where they partook a snack for 45 minutes, accused again reiterated his

request for sexual intercourse but the complainant kept silent. After they were through eating, accused with complainant, proceeded to Ulas river and on the way again repeated his indecent proposal for sexual intercourse that again invoke (sic) no response from the complainant.

While the accused washed the truck at Ulas river, the complainant sat waiting on the front seat. It was when he was almost through washing the truck that it rained so the complainant and the accused, together with two passers-by took shelter in the truck. At 9:00 o'clock the rain stopped and the two persons immediately left. At about 10:00 o'clock that evening, accused started the truck for the homeward trip to Davao City poblacion. Complainant alighted at the corner of Jacinto-Quezon Boulevard junction and the accused went home.

On cross examination, accused admitted that he has come to know the complainant at the Matina Barangay High School for he was assigned in the said school for a month previous. Although complainant knew that accused was not going home directly, she agreed to come along with him in the dump truck.

The accused presented as evidence the affidavit of the complainant which was sworn to before Teresita Catibod and marked as Exhibit "2" and paragraph 5 marked as Exhibit "2-A" is hereunder quoted:

"That after taking his snack, during which he also persuaded to have the snack with him, we left on the same green dump truck and when I noticed that we were going in the direction of Mintal, I again protested and asked him where we were going, but he told me that he was just going to wash his dump truck;" (pp. 147-148, t.s.n., hearing on May 8, 1978).

and paragraph 7 of Exhibit "2" marked as Exhibit "2-B" which is hereunder quoted, to wit:

"That when I noticed that it was already getting dark, I pleaded with said driver to bring me home because my relatives would be looking for me, but he ignored me and instead delayed the washing of his truck so that it was already dark when he finished washing his truck." (p. 148, t.s.n., hearing on May 8, 1978).

In his attempt to obtain a reversal, the accused-appellant faults the trial court in 1) giving full faith and credit to the testimonies of the prosecution witnesses which he described as incredible, biased, and unreliable, and 2) in finding him guilty beyond reasonable doubt.[7]

We deny the appeal.

The accused-appellant's only defense is denial. His claim that there was no sexual congress between him and the complainant Aida Genovia is futile,[8] as mere denials constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[9] Moreover, as between a positive and categorical testimony which has the ring of truth on one hand and a bare denial on the other, the former is generally held to prevail.[10]

The bottomline is the credibility of the witnesses. Rape is an accusation easy to make, hard to prove, but more difficult for the party accused, though innocent, to defend.[11] In prosecuting offenses of this nature "conviction or acquittal depends entirely on the credibility of complainant's testimony because of the fact that usually only the participants can testify as to its occurrence." [12] Thus, the caveat that the testimony of the injured woman should not be received with precipitate credulity. More so when the conviction depends at any vital point upon her uncorroborated testimony.[13] However, just because a woman cries "rape!" does not mean that the accused is guilty. The accused, therefore, must be convicted on the basis of the credibility of the testimony of the complainant and her witnesses.

Based on the record, we concur with the trial court's finding that the testimonies of Aida Genovia and her cousin Erlinda Racho deserve more credence than the testimony of the accused-appellant, for, as aptly stated by the trial

court,[14]

Genovia gave straightforward and credible answers. Her story had the earmarks of truth, as told by a naive, high school student, without that veneer or sophistication so common among the young; an innocent who cried in anguish in remembrance when narrating her ordeal with the accused before the court.

We take note of the fact that Aida Genovia had no reason to fabricate so serious a charge as rape and to testify against the accused-appellant, considering that although already 18 years of age and a fourth year high school student at the time of the commission of the offense, she was, as shown by the evidence, very naive for accepting a ride from someone whom she knew only by face and simply because she wanted to save on her fare.[15]

It has been said, and correctly so, that when a woman testifies that she has been raped, she says all that is needed to signify that the crime has been committed.[16] For, no young, decent Filipino woman would publicly admit that she had been criminally ravished unless that is the truth, for her natural instinct is to protect her honor.[17] It is therefore preposterous to imagine that the complainant would admit the ignominy she had undergone in the hands of the accused if her confession of rape were not true.[18]

The complainant testified that when she reached the house of her cousin, she immediately reported the incident,[19] and on the following day, accompanied by her cousin, she complained to the authorities.[20] This prompt report and complaint, hue and cry as they were, are indicative of the spontaneity and the truthfulness of her account of her trauma. We reiterate what was held in a recent case:

x x x willingness of the complainant to face police investigators and to submit to a physical examination is a mute but eloquent testimony of the truth of her charge against her own father. If she were merely prodded to relate a fabricated story to build up his serious charge, she would recoil at the possibility of being caught in her prevarication. She should feel deterred by the grave consequences of such wilfull falsehoods which could easily be unmasked by the medical findings that would be made after a thorough examination of her body. It was the truth of her story that gave her the courage and boldness fearlessly to face interrogation and medical examination both effective means of verifying the truth of her serious accusation.[21]

Likewise, the testimony of Erlinda Racho deserves credence as it dwelt only on a collateral matter that did not touch upon the commission of the crime itself. Her relationship with the complainant did not impair her credibility as the accused failed to show that she had an improper motive to testify against him. Well settled is the rule that when there is no showing of improper motive on the part of the witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit. On the contrary, their natural interest in securing the conviction of the guilty would deter them from implicating persons other than the culprit, otherwise, the latter would gain immunity.[22]

Contrary to the claim of the accused-appellant, we are convinced that his guilt has been proven beyond doubt.

Concededly, the complainant voluntarily went with the accused, but she did so only upon his urging, knowing him by face, he being a neighbor of her aunt in Barrio Obrero, Davao City, where she once resided, and because she wanted to save on her fare.[23]

The accused argues that Aida Genovia was not a hapless victim of rape because she failed to shout for help at the first opportunity which would be the natural reaction of a person so abused. Instead, she hid herself while they were passing through the traffic division of the Police Department at Magallanes Street and the checkpoint before reaching Bankerohan District on their way to her place immediately after the sexual assault. But this can be explained by the testimony of Aida that before she and the complainant left the scene of the rape, the accused warned her not to tell her parents, the authorities, or anyone about what had transpired between them.[24] It was

not therefore unusual for her to be timorous considering that the accused was just beside her in the truck, and fear for her life was her paramount concern. If she did hide herself, it was in obedience to the accused-appellant's order which she feared to disobey lest greater harm befall her.[25] "People react differently under emotional stress." [26] There is no standard form of behavior when one is confronted by a shocking incident especially if the assailant is physically near; the workings of the human mind when placed under emotional stress are unpredictable; and that people react differently. In a given situation, some may shout, some may faint; some may be shocked into insensibility, while others may yet welcome the intrusion.[27]

To bolster his denial of sexual intercourse with the complainant, the accused relies heavily on the medical report of Dr. Mita Bernardino of the Department of Health, Davao General Hospital, which states:[28]

LMP - November 4, 1975

P.E. - Gen: F/D, F/N, conscious, ambulatory, no external sign of physical injury.

HEENT - Pinkish conj. patent ariway

Heart & Lungs - Essentially Normal

Breasts - well developed

Abdomen

-

flat, soft, tender on deep palpation

Genitalia

-

Abundant pubic hair

-

Labia major & inner thighs with blood & foul swelling (sic)

-

Hymen - intact

-

Vagina - admits one finger, with bloody discharge

-

Cervix - open; small, with bloody discharge.

-

Uterus - small

-

Adnexa - Negative

Extroditities

-

Inner thighs with blood.

Laboratory Result: "NO SPERMATOZOA FOUND"

"NEGATIVE FOR CRAVINDEX TEST"

(Sgd.) MITA BERNARDINO, M.D.

Resident Physician

(Italics supplied).

It must be emphasized that a medical certificate is not conclusive as to whether or not rape is committed.

The force or violence required in rape cases is relative. When applied, it need not be too overpowering or irresistible. What is essential is that the force used is sufficient to consummate the purpose which the offender had in mind, or to bring about the desired result.[29] In using force, it is not even necessary that the offender is armed with a weapon, as the use of a weapon serves only to increase the penalty.[30] Intimidation can be addressed to the mind as well.[31] In sum, the absence of external signs or physical injuries does not negate the commission of the crime of rape.[32]

The medical finding that the hymen is intact does not negate rape. Penetration of the penis by entry into the lips of the female organ even without rupture or laceration of the hymen suffices to warrant conviction for rape.[33] Likewise, the absence of spermatozoa in the vagina or thereabouts does not negate the commission of rape because the important consideration in rape is penetration and not emission.[34] The absence of spermatozoa in this case may be due to the fact that she was examined only on November 7, 1975, two days after the incident.[35] She must have washed them out of her body by then.

We are convinced that the accused-appellant committed the crime charged. As observed by the Solicitor General, the invitation to ride with him, his bringing the complainant to Ulas on the pretext of taking merienda, and his proceeding to Catalunan allegedly to wash the truck were all part of a scheme deliberately planned to perpetrate the accused-appellant's evil designs.[36]

Guided by the time-honored doctrine that where the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court unless certain facts of substance and value have plainly been overlooked and that if considered might affect the result of the case.[37] Absent any showing that the trial court plainly overlooked or ignored certain facts of substance and value, which if considered would warrant a different conclusion, we have to affirm such factual findings of the trial court as we do in this case.

The accused-appellant's voluntary surrender[38] cannot be credited in his favor in view of the penalty of reclusion

perpetua which is a single indivisible penalty.

WHEREFORE, the decision of the trial court is hereby AFFIRMED with the modification that the accused is ordered to indemnify the complainant in the sum of P30,000.00.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

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- [1] Criminal Complaint, Rollo, 6.
- [2] Order dated March 26, 1976, Original Record, 35.
- [3] Rendered by Francisco Z. Consolacion, presiding judge, CFI of Davao City, 16th Judicial District, Branch II, 154-161.
- [4] Decision, Original Record, 161.
- [5] Order dated December 26, 1978, Original Record, 174.
- [6] Original Record, 154-158.
- [7] Accused-appellant's Brief, 54(1).
- [8] T.s.n., May 8, 1978, 144-145.
- [9] People vs. Jacobo Alcantara, G.R. 74737, July 29, 1988; People vs. Dagangon, L-62654-58, Nov. 13, 1986, 145 SCRA 464; People vs. Bocasas, L-61134, July 15, 1985, 137 SCRA 531.
- [10] People vs. Victor Mejias, G.R. 79677, November 28, 1988.
- [11] People vs. Manuel Cui, Jr. y Caballes, G.R. No. L-48084, June 20, 1988.
- [12] People vs. Victor Mejias, 79677, Nov. 28, 1988; People vs. Dominador Averro, G.R. No. 76483, Aug. 30, 1988; People vs. Alcid, L-66387, Feb. 28, 1985, 135 SCRA 28.
- [13] People vs. Manuel Cui, Jr., supra.
- [14] Decision, Regional Trial Court, 160.
- [15] T.s.n., Sept. 10, 1976, 14.
- [16] People vs. Robert Poculan, G.R. Nos. 70565-67, Nov. 9, 1988; People vs. Cesar Cariño, Sr., G.R. Nos. 74298 and 74351, Nov. 11, 1988.
- [17] People vs. Dominador Averro, G.R. No. 76483, Aug. 30, 1988; People vs. Alexander Quidilla, G.R. Nos. 79369-70, Oct. 28, 1988.
- [18] People vs. Nestor Fernandez, G.R. No. 80228, Sept. 12, 1988.
- [19] T.s.n., Sept. 10, 1976, 40; t.s.n., Dec. 6, 1976, 76.
- [20] T.s.n., Dec. 6, 1976, 77.
- [21] People vs. Benito Ramos, G.R. No. 64656, Nov. 18, 1988.
- [22] People vs. Geronimo Aguinaldo, G.R. No. 75816, Sept. 26, 1988, citing People vs. Radomes, L-68421,

March 20, 1986, 141 SCRA 548; *People vs. Solero Luardo, et al.*, G.R. No. L-36788, Nov. 24, 1988.

[23] T.s.n., Sept. 10, 1976, 14; t.s.n., Dec. 6, 1976, 50.

[24] T.s.n. Sept. 10, 1976, 38-39; t.s.n., Dec. 6, 1976, 70-72.

[25] T.s.n., Dec. 6, 1976, 73.

[26] *People vs. Joaquinito Hacbang*, G.R. No. 75293, Aug. 17, 1988.

[27] *People vs. Nestor Fernandez*, G.R. 80228, September 12, 1988.

[28] Medical Certificate, Original Record, 4.

[29] *People vs. Federico Mendoza*, G.R. 74653, July 26, 1988.

[30] *People vs. Ricardo Sato*, G.R. No. L-47911, July 27, 1988.

[31] *People vs. Poculan*, G.R. Nos. 70565-67, November 9, 1988.

[32] *People vs. Federico Mendoza*, *supra*.

[33] *People vs. Sixto Tabago*, G.R. 69778, Nov. 8, 1988; *People vs. Romeo Estrebella*, G.R. 71464, Aug. 4, 1988.

[34] *People vs. Sixto Tabago*, *supra*.; *People vs. Jimmy Villanueva*, G.R. 50299, June 20, 1988.

[35] Medical Certificate, Original Record, 4.

[36] Brief for plaintiff-appellee, Rollo, 71(8).

[37] *People vs. Benito Ramos*, *supra*; *People vs. Roberto Paragoso*, G.R. No. 50872, Oct. 18, 1988; *People vs. Sixto Tabago*, *supra*; *People vs. Roberto Poculan*, *supra*; *People vs. Gavino Aguinaldo*, *supra*; *People vs. Nestor Fernandez*, *supra*; *People vs. Roberto Calicdan*, G.R. 73602, Aug. 31, 1988; *People vs. Dominador Averro*, *supra*; *People vs. Jesus Viray*, *supra*; *People vs. Reynaldo Alvarez*, G.R. 70831, July 29, 1988; *People vs. Guillermo Egaras*, G.R. No. 33357, July 29, 1988; *People vs. Jacobo Alcantara*, *supra*; *People vs. Antonio Co*, G.R. No. 38052, July 14, 1988; *People vs. Hugo Jarzi*, G.R. No. 71767, June 30, 1988; and *People vs. Samuel Ramos, et al.*, G.R. No. 76744, June 28, 1988; *People vs. Sotero Luarda*, *supra*.

[38] Order, dated Feb. 3, 1976, Original Record, 35.

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