

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMANDO SIMBULAN, DEFENDANT-APPELLANT.

G.R. No. 50476. September 30, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Appellant Amando Simbulan was convicted by the then Court of First Instance of Pampanga, Branch II (Guagua), of the crime of rape. The dispositive portion of the decision reads:

"IN VIEW OF THE ABOVE CONSIDERATIONS, this Court finds the accused of having forced the complaining witness to submit to a sexual intercourse in the night of December 7, 1964 but on the following days, the sexual cohabitation was done freely. (Underscoring supplied).

"This Court, therefore, finds the accused guilty of the crime of rape and pursuant to Art. 335 of the Revised Penal Code, hereby sentences him to reclusion perpetua and indemnify the complaining witness in the sum of P5,000.00."

The People's evidence shows that on December 7, 1964 complainant Bernadette Banawa, an 18-year old college freshman taking social work course in the University of Sto. Tomas (UST) in Manila, took her belongings, like clothes, bed sheets and pillow cases, from her Auntie's boarding house at Sulucan, Sampaloc, Manila, just across España Street from the University, preparatory to going home in Mandaluyong. She was carrying these things when accused Amando Simbulan called her name and invited her to go with him since they both reside in Mandaluyong. They boarded a passenger jeep and alighted at Plaza Sta. Cruz, Manila where Simbulan invited her to a snack at a nearby restaurant. Thereafter, Simbulan hailed a taxi, boarded the same with Bernadette and told the driver to stop at the Philippine Rabbit Bus station. Bernadette was surprised and she asked Simbulan where they were going. Accused told her that he would get something from a relative who lives nearby. The place "nearby" turned out to be at Tulauc, San Simon, Pampanga.

Arriving at barrio Tulauc at 3:30 in the afternoon, they stayed in the house of Emerita Simbulan, a cousin of the accused. They partook of a merienda following which complainant told the accused that she wanted to go home. Simbulan answered that he was still waiting for another relative. As it was getting late, about 5:00 in the afternoon and the supposed relative of Simbulan had not shown up, Bernadette asked him again to bring her home to Manila. The accused refused and, instead, threatened her not to persist in going home or else something would happen to her, at the same time displaying a "balisong."

That night of December 7, 1964, Amando Simbulan poked a knife at her and she saw him already naked. He forced her to lie down and when she resisted Simbulan slapped her many times. Despite her struggle and resistance, the accused succeeded in sexually abusing her.

On December 10, 1964, Chief of Police David Santos of San Simon, accompanied by a patrolman, arrived at the house where accused and complainant were found and they informed her that her parents had been looking for her and were waiting in the municipal building of San Simon. The complainant went with the police while the

accused followed in another jeep. The Solicitor General in his brief manifested:

"x x x Complainant was incoherent in answering any question asked by the police chief on the way to the municipal building. She was agitated or excited, and could not give a normal statement to the police despite four (4) hours respite at the municipal building. She later told the police chief that they will file a complaint against the accused. The police chief advised the complainant to consult a lawyer. The incident was entered in the police blotter; a certified true copy (Exh. 'A') was submitted in court (t.s.n., July 17, 1969, pp. 8, 11-13, 16-20, 29-31, 34, 36-37; Dec. 2, 1969, pp. 8-9, 12; Aug. 24, 1970, pp. 15-16; Sept. 18, 1972, pp. 3 & 5; Sept. 14, 1972, pp. 65-67).

"Complainant was finally examined on December 14, 1964 by the Medico-Legal Officer of the National Bureau of Investigation at Manila, after repeated attempts. The examiner was not around on December 10, 1964 when complainant went to the NBI after the rescue (t.s.n., p. 6, Sept. 18, 1972). Dr. Dario C. Nalaga of the NBI after examining the complainant issued a report (Exh. 'D') which pertinently reads as follows:

'Findings:

Contusion, left forearm, lower thirds, dorsal aspect, 4.0 x 2.5 cms. purplish black w/yellowish tinge color at periphery.

CONCLUSIONS:

1. Extremity physical injuries noted consistent to or about date of commission.
2. Medical evidence consistent with sexual intercourse with man an alleged date of commission on or about December 7, 1964."

"Complainant first administratively charged the accused, an employee in the X-ray Department of the National Mental Hospital in Mandaluyong. She then filed a criminal complaint (Exh. 'B') for rape against the accused before the Municipal Court of San Simon, Pampanga, on March 17, 1965. Her sworn statement (Exh. 'C') was verified before Municipal Judge Florentino Mercado (t.s.n., pp. 21- 23, July 17, 1969; pp. 15-16, 23-24, Dec. 2, 1969; pp. 18-19, Aug. 24, 1970; pp. 12-14, 16, Sept. 18, 1972)."

On the other hand, accused-appellant claims that his sexual intercourse with Bernadette was voluntarily consummated and that they were sweethearts when they eloped on December 7, 1964 to San Simon. Their acquaintanceship started in 1960 when they were neighbors in the Yabut Compound in Mandaluyong, Rizal. Both used to be leaders of the youth in the community, so much so that in 1964 appellant was elected president and the complainant, secretary of the "Junior and Senior Club" in their community. They also stood as sponsors in one of the baptismal ceremonies of one of the children of a member. Hence, they are "compadre and comadre." It was on November 3, 1964 when they went to Tulauc for the first time and that was also the first time they had sexual intercourse. In the afternoon of the same day, they went home to their respective residences in Mandaluyong as if nothing had happened, although they kept to themselves their plan to elope on December 7, 1964.

As agreed upon, about 10:00 in the morning of December 7, 1964, he fetched Bernadette at the Dapitan gate of the University of Sto. Tomas and, with her belongings, they proceeded to Tulauc, reaching the place at about 2:00 in the afternoon. From December 7, 1964 they stayed at the house of his cousin, Emerita Simbulan, as husband and wife, until December 10 when the Chief of Police of San Simon, with another policeman, arrived at about 10:00 in the morning and informed then that the complainant's parents were at the municipal hall waiting for Bernadette. They went with the police authorities. Bernadette frankly told them that she loves Mading and would prefer to die than leave him. At this juncture, her mother hit her on the face and in her body and dragged complainant at the waiting jeep despite her protestation and shouts, "Do not separate me from Mading, I love him so much."

After they had left, appellant went back to his temporary residence in Tulauc. He was not investigated by the Chief of Police regarding the circumstances why she was with him. Everything seemed to have been forgotten until May 1965 when he received a subpoena from the municipal judge of San Simon directing him to testify in a case of rape filed against him.

We cannot sustain the judgment of conviction.

The uncorroborated testimony of the offended party in cases of rape may be sufficient under certain circumstances to warrant a conviction, yet, "from the very nature of the charge and the ease with which it may be made and the difficulty which surrounds the accused in disproving it where the point at issue as to whether the cohabitation was had with or without the use of force or threats, it is imperative that such testimony should be scrutinized with the greatest caution. In all such cases the conduct of the woman immediately following the alleged assault is of the utmost importance as tending to establish the truth or falsity of the charge. Indeed it may well be doubted whether a conviction of the offense of rape should ever be sustained upon the uncorroborated testimony of the woman unless the court is satisfied beyond a reasonable doubt that her conduct at the time when the alleged rape was committed and immediately thereafter was such as might be reasonably expected from her under all the circumstances of the case." (United States vs. Flores, 26 Phil. 268).

In the case at bar, when the complainant went with appellant she had with her two bags containing clothings and personal belongings. This serves to indicate that she eloped with appellant. While it is true that Bernadette testified that she got them from her Auntie's boarding house in nearby Sulucan, Sampaloc, Manila, where she used to board and that she was to bring them home to Mandaluyong on December 7, 1964, the last day of classes, this was belied by her own mother when the latter testified that her daughter had started from their home in Mandaluyong that day, thus:

"Q Do you know the complainant here Bernadette Banawa?

A She is my daughter.

Q On December 7, 1964, what was her occupation?

A She was studying at the University of Sto. Tomas.

Q What time did she leave your home on that December 7, 1964?

A Six o'clock in the morning, sir.

Q Why, what time was her classes at the University of Sto. Tomas on that day?

A From 7:00 to 12:00 noon." (tsn., pp. 3-4, August 24, 1970 hearing)

Coming from her house on December 7, 1964, at 6:00 in the morning, it is indeed surprising that she would bring with her two bags of clothes if it was not her intention to elope with appellant. And, assuming that after her classes that morning, she went to her Auntie's place to get her things because that was the last day of classes, We take judicial notice that Christmas vacation does not start that early but, somewhere after December 15. Further, We take note of the fact that the complainant was physically examined by Dr. Nalaga whose report reads: "hymen x x x with superficial healed lacerations at 4:00 and 9:00 positions x x x ." The examination on complainant was made on December 14, 1964, or seven (7) days after the alleged rape. We agree with the defense that the lacerations could not have healed within such a short period of seven days, from December 7 to December 14, 1964. The result of the examination supports the theory of the defense that a month before, on November 3, 1964, complainant and appellant had their first carnal intercourse.

Besides, there was lack of tenacious resistance or objection on the part of Bernadette when after having taken their snack somewhere at Sta. Cruz, Manila they took a taxi and proceeded to the Philippine Rabbit Bus station somewhere in Rizal Avenue. That alone was a warning that they were going somewhere outside Metro Manila. If, as claimed by the prosecution, there was no consent on her part to go with appellant she could have easily taken her own transportation to go to her residence at Mandaluyong. There was absolutely no resistance made to free herself from the clutches of Simbulan. Considering the number of people in the area, appellant could not have forced her to go with him unless there was willingness on her part. And, finally, the delay in giving her written statement to the police (Exhibit "7"), and the filing of the case in the municipal court of San Simon, Pampanga (Exhibit "10"), both on March 17, 1965 are circumstances which create reasonable doubt that the crime of rape was committed on December 7, 1964. In a case, (People vs. Gabiana, 117 SCRA 260); it was held that "x x x two other circumstances which, if carefully appraised, lead to the conclusion that the guilt of the accused has not been proved beyond reasonable doubt. The first was the absence of any positive statement that she was raped right after the alleged incident when her state of natural indignation would have prompted her to do so. The second, even more telling, circumstance was that while the alleged incident took place on April 29, 1973, she failed to identify appellant as the rapist until May 7, fully nine days after the event." In the case at bar, more than three (3) months had elapsed before the case was filed in court. She could have narrated to the police the alleged rape when she was allegedly rescued on December 10, 1964. This she did not do. In People vs. Mendiguarin, 92 SCRA 679, this Court "already observed that the books disclose many instances of trumped-up charges of rape. In rape cases the testimony of the offended woman should not be received with precipitate credulity. Her uncorroborated testimony should not be accepted unless her sincerity and candor are free from suspicion. A little insight into human nature is of utmost value in judging matters of this kind." Under the circumstances, it would be in keeping with the fundamental principle that to justify conviction there must be proof of moral certainty otherwise the accused is entitled to acquittal. The 1973 Constitution provides that "in all criminal prosecutions the accused shall be presumed innocent until the contrary is proved." Rule 115 of the Rules of Court mentions as first among the "rights of defendants at the trial"- the right of defendant to be presumed innocent until the contrary is proved.

WHEREFORE, the judgment of conviction is REVERSED and appellant is hereby ACQUITTED.

SO ORDERED.

Abad Santos, Plana, and Escolin, JJ., concur.

Melencio-Herrera, J., (Acting Chairman), J., concurs on the ground of reasonable doubt.

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