

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GRACIANO OLALIA, JR., ACCUSED-APPELLANT.

G.R. No. 50669. March 12, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

On appeal is the Decision of the then Court of First Instance of Pangasinan, Branch X, San Carlos City, in Criminal Case No. SCC-317 for Forcible Abduction with Rape, which convicted the accused, Graciano Olalia, Jr., of the crime charged and imposed the sentence of reclusion perpetua.

The People's version of the incident is summed up in its Brief as follows:

"On February 25, 1975, Julita Macaraeg, the complainant, sixteen (16) years old, provinciana, was a first year high school student at Bayambang National High School in Bayambang, Pangasinan. She was dismissed from her classes at 5 o'clock in the afternoon. She started for home at around 5:30 P.M. as she was as-signed 'cleaner' for that day.

While walking alone along the National Highway in Barrio Nibaliw, Bautista, Pangasinan, she met Graciano Olalia, Jr., the accused, who was driving a Yamaha tricycle. Suddenly, the accused stopped his tricycle near the complainant, and invited her for a ride. She refused the offer and thereafter, ran along the road going to their house. The accused jumped off his tricycle and ran after her. She stumbled and was about to shout when the accused caught up with her, covered her mouth and slapped her several times. As a result, she got dizzy. She still refused to ride but the accused pulled her and threatened her with a balisong.

While she was inside the tricycle an old woman passed by and told the accused 'do not force a person to be your passenger to ride on your tricycle.' The accused countered that 'she is my cousin.' Before the accused brought complainant to the house of Puring (Eugenia Mabanglo) and Joaquin, accused's cousin and uncle respectively, he tied her hand to the right side and left hand to the left side of the tricycle. Upon reaching Puring and Joaquin's house, the accused talked to the occupants of the house. The accused untied complainant's hands and pulled her up to the balcony of the house. The complainant saw Puring and Joaquin in-side a room, peeping at them.

She called for help but the accused slapped her several times, threatened her with a balisong and bit her on her cheeks. Afterwards, the accused pushed complainant to the floor and tied her hand to the floor made of bamboo slits. With her feet apart, the accused got another rope and tied her ankles to the floor. The accused also tied a hand-kerchief on complainant's mouth. The complainant resisted accused's advances by wiggling her head, but accused slapped her, and laughed at the scar on her stomach. Thereafter accused violated complainant's womanhood. (pp. 8-25, TSN, March,10, 1976; pp. 29--46, TSN, July 16, 1976).

All night, the accused guarded complainant. He drank wine for supper whereas complainant was not given anything. The accused released the complainant at around 6:00 A.M. on February 26, 1975, with a warning not to make any report; that if she makes a report and he sees her, he would kill her. Upon release, complainant went straight home.

Upon reaching their house, she found no one at home. Her mother was in Manila at that time. Complainant's mother arrived from Manila in the second week of March 1975. Upon being confronted by her mother, she admitted that the accused abducted and abused her. Thereafter, they filed a complaint with the PC Headquarters in Bayambang, Pangasinan. (pp. 20, 23-25, Tsn. March 10, 1976; p. 1, Tsn. June 15, 1976; pp. 56-61, tsn. September 8, 1976)."[1]

Additionally, Laura Vda. de Macaraeg, complainant's mother, testified that she arrived in Pangasinan from Manila on March 16, 1975; that on March 21, 1975 her friend, Loleng Ventinilla Olalia, an aunt-in-law of the accused, sent for her and told her "your daughter is pitiful; she was abused by Jr. in the house of Joaquin; that Joaquin did not even help her on the contrary he is broadcasting in front of the store to the people".[2] It was after receiving that information that the mother confronted complainant who admitted that she had, in fact, been abducted and abused but that she was afraid to disclose it because of threats to kill by the accused. That same afternoon, mother and daughter went to the Philippine Constabulary (PC) to lodge a complaint and two days later they went to the San Carlos Hospital where complainant underwent a physical examination.

The physician's medico-legal certificate, dated March 23, 1975 (Exhibit "A"), indicated the following findings:

"No laceration of hymen but vagina op admits 2 fingers easily without pain.

"Laboratory Findings:

"Pregnancy test - negative."

Complainant's mother further declared that notwithstanding Loleng Ventinilla's revelation, she did not confront Puring and Joaquin about the incident[3], and that when she asked Loleng to testify, the latter declined because the accused's father is her brother-in-law.[4]

In defense, the accused interposed alibi stating that on the date of the incident he did not ply his trade as a tricycle driver because he was at his father's place at Sinabaan, Bautista, Pangasinan, the whole day helping him plant onions; that thereafter, he also helped in the preparation and construction of voting booths, which were to be used in the referendum of February 27, 1975. His testimony was corroborated by his father and by Genaro Macasieb, a Barrio Councilman. His cousin, Eugenia (Puring) Mabanglo, the owner of the house where the alleged rape took place, testified that she did not see the accused on the date of the incident; that she did not know complainant; and that the latter never set foot on her (Eugenia's) house. Laureana Ventinilla Olalia, both in her Affidavit taken by the PC and in her testimony, declared that she did not know complainant nor did she see the latter in the evening of the incident.

After trial, the lower Court meted out a verdict of guilty, thus:

"WHEREFORE, this Court finds accused Graciano Olalia, Jr., guilty beyond the shadow of doubt of the crime of Abduction with Rape as charged in the information defined and penalized under Article 335 in relation to Article 342 of the Revised Penal Code and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to indemnify the offended party in the amount of Ten Thousand (P10,000.00) Pesos without subsidiary imprisonment."

Challenging said Decision, accused now alleges:

"The lower court erred in giving credence to the testimony of the alleged victim and in not deciding the case in accordance with Supreme Court decisions."

The issue raised centers on the credibility of complainant's testimony. We start with some basic principles. It is well established that on matters of credibility, the Appellate Court will generally not disturb the findings of the

Trial Court, as the latter is in a better position to decide said question, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial unless it has plainly overlooked certain facts of substance and value, which, if considered, might affect the result of the case.

Further, in crimes against chastity, conviction or acquittal of the accused depends almost entirely on the credibility of complainant's testimony.[5] While rape is a detestable crime, it is an accusation easy to make, hard to prove, and still harder to defend by the person accused[6] , so that such charge, based upon the lone and uncorroborated testimony of the victim, must be regarded with utmost caution and examined with the greatest care. To warrant conviction, the testimony of the victim must be clear and free from serious contradictions, and her sincerity and candor, free from suspicion.[7] The evidence to be believable must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experience and observations of mankind can approve as probable under the circumstances.[8]

Complainant declared that after the accused forced her to ride in his tricycle at about 5:30 in the afternoon of February 25, 1975 at Barrio Nibaliw, Bayambang, Pangasinan, which is along the National Highway[9] , an old woman saw them and advised the accused not to force anyone to ride in his tricycle but that he replied that she was his cousin and the woman went her way; thereafter, the accused tied her right hand to the right side of the tri-cycle, her left hand to the left side, bound her feet together, and covered her mouth, presumably with a piece of cloth. He then drove around before bringing her to the house of his first cousin, Puring (Eugenia) Mabanglo, at Bongato West, Bayambang, Pangasinan[10] ; that while driving the tricycle with one hand, the accused was pointing a "balisong" at her neck with the other; that they arrived at Puring's house at around 7:00 P.M.[11] or 8:00 P.M.[12] where the accused forcibly pulled her up the stairs to the balcony of the house; that Puring and her father Joaquin, who were in the house and saw her struggling with accused, did not come to her succor despite her motions for help[13] ; that the accused bound both her arms close to her body with a rope wound around her waist, tied her ankles which were spread apart, also with a rope, to the flooring of the balcony made of bamboo slits spaced from each other at about the size of a ring finger, covered her mouth with a handkerchief knotted at the back of her head[14] , and thereafter abused her; that she saw Puring and Joaquin peeping at them without doing anything[15] ; she beckoned to them but they hid because a balisong was pointed at her neck.[16] Puring is the beautician of her mother and they are friends but the former did nothing; she just watched.[17]

The above narration of events by complainant does not strike us as positively credible, probable, and entirely in accord with human experience. When the accused replied to the old woman that complainant was her cousin, complainant said nothing to refute it so that at least the woman could have helped or could have reported the incident. There is no evidence either that Puring Mabanglo and her father, Joaquin, had prior knowledge of the accused's intention to abduct and molest complainant. Yet, they did not even demand an explanation nor evince surprise upon seeing the accused with a lady passenger bound to his tricycle, who after being untied, was forcibly pulled up the stairs to the balcony of their house by the accused. There is no proof either that father and daughter were so terrified of the accused that they could not even utter a word of protest at the latter's actuations. Neither was it shown that they were threatened by the accused not to interfere. Complainant merely stated that the accused talked to the occupants of the house in a loud voice while pulling her up the stairs.[18]

It challenges credulity that any individual, man or woman, would be so callous as to tolerate, abet, or condone the commission of a crime as serious as rape in his/her abode without lifting a finger or trying to stop the offender specially if the latter be a younger relation, and would even go as far as to "watch" the employment of force against a hapless girl and the violation of her person. Puring, being a woman, a beautician, and a friend of complainant's mother could not have been so passive and indifferent to the dastardly act of the accused, her cousin. And considering the nature of the offense, it is most unlikely that the culprit would select a place where

detection would have been obvious. Complainant was allegedly abused at an inhabited house abutting the street[19], in the balcony thereof [20], which even if walled might still be viewed from the stairs as the balcony adjoins the same[21], and on a flooring made of slit bamboo, with visibility from underneath.

Complainant alleged that Puring and Joaquin could not come to her aid because the accused was pointing a "balisong" at her throat. Neither one of them, however, faced threats to their life so that they could have asked for outside assistance, or could have even appealed to the accused to desist from employing force and satisfying his bestial desires. Moreover, accused could not have been pointing the weapon at complainant's throat all the time. He must have put it down when he allegedly tied complainant's arms and ankles and covered her mouth with a handkerchief, which he could not have done with one hand only.

It is noteworthy, too, that complainant did not immediately report her misfortune to her brothers and sisters, to the police, nor to barangay authorities much less to her mother upon the latter's arrival from Manila. The mother allegedly came to know of the incident only through Loleng Olalia, accused's aunt.[22] It was only upon being confronted by her mother that complainant informed her of the same.[23]

The physical examination of complainant conducted on March 23, 1975, or 26 days after the alleged incident, showed: "No laceration of hymen but vaginal op admits 2 fingers easily without pain." [24] In respect thereof, the examining physician declared that there was "no history of any pain" and that "in the passage there should be pain elicited upon introduction of the finger even with one finger only". The likelihood, therefore, exists that complainant surrendered her virginity willingly at some other place, considering the medical finding that complainant was no longer a virgin at the time of the examination.[25]

Although the accused's defense of alibi has not been proven as satisfactorily as to leave no room for doubt since he was not far from the vicinity of the crime scene, this cannot be the basis of conviction, the rule being that in a criminal prosecution, the State must rely on the strength of its own evidence and not on the weakness of the defense.[26] An aura of improbability surrounds the manner in which the alleged rape was committed. Complainant's testimony is far from satisfactory and convincing. If a reasonable doubt exists in the mind as to the commission or rape, as in this case, the verdict must be one of acquittal.[27]

WHEREFORE, the judgment of conviction of the Trial Court is REVERSED and SET ASIDE, and the accused is hereby acquitted, upon reasonable doubt, of the crime with which he has been charged.

Costs de officio. SO ORDERED.

Plana, Relova, Gutierrez, Jr. and De la Fuente, JJ., concur.

Teahankee, J., (Chairman), on official leave.

[1] pp. 3-5, Brief for the Plaintiff-Appellee.

[2] T.s.n., September 8, 1976, p. 60.

[3] T.s.n., *ibid.*, p. 66.

[4] T.s.n., *ibid.*, p. 67.

[5] *People vs. Ilagan*, 64 SCRA 170(1975); *People vs. Bardaje*, 99 SCRA 388 (1980).

[6] *People vs. Reyes*, 60 SCRA 126 (1974).

[7] *People vs. Lacuña*, 87 SCRA 364 (1978).

- [8] *People vs. Garcia*, 89 SCRA 440 (1979).
- [9] T.s.n., July 16, 1976, p. 31.
- [10] T.s.n., *ibid.*, pp. 35-36.
- [11] T.s.n., March 10, 1976, p. 14.
- [12] T.s.n., July 16, 1976, p. 36.
- [13] T.s.n., *ibid.*, pp. 40-41.
- [14] T.s.n., *ibid.*, pp. 42-45.
- [15] T.s.n., March 10, 1976, p. 17.
- [16] T.s.n., July 16, 1976, p. 45.
- [17] T.s.n., September 7, 1976, p. 51.
- [18] T.s.n., July 16, 1976, p. 40.
- [19] T.s.n., March 11, 1977, p. 117.
- [20] T.s.n., March 10, 1976, p. 21.
- [21] T.s.n., July 1, 1977, p.88; t.s.n., March 11, 1977, p. 117.
- [22] T.s.n., September 8, 1976, pp. 60-61.
- [23] T.s.n., *ibid.*, p. 61.
- [24] Exhibit "A", p. 1, List of Exhibits, Records of Criminal Case No. SCC-317.
- [25] T.s.n., March 10, 1976, p. 7.
- [26] *People vs. Basuel*, 47 sCRA 207 (1972).
- [27] *People vs. Nazareno*, 80 SCRA 484 (1977).

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