

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO PARAGOSO, DEFENDANT-APPELLANT.

G.R. No. 50872. October 18, 1988

Ponente: CORTES, J.

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CORTES, J.:

On May 30, 1978 Florentina Alecha filed a complaint against Roberto Paragoso accusing him of the crime of rape committed as follows:

That on or about the 28th day of January, 1978, at 3:00 o'clock at dawn, more or less, in the Barangay of Valencia, Municipality of Carcar, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to have carnal knowledge of the undersigned, a virgin, single and of good moral standing and reputation in the community, while fixing her panty after urinating downstairs of their house preparatory to going back upstairs, out (sic) of a sudden approached and grabbed her placing his arm around her waistline, and as she was lifted up, the above-named accused muzzled her mouth with his hand to prevent her from shouting for help, and as the undersigned struggled very hard to extricate herself from the accused's strong hold, the above-named accused boxed her stomach and because of the accused's hard fistic blow on the undersigned's stomach, she lost consciousness, and while in such state of unconsciousness, the above-named accused carried her to a distance far from her house and with deliberate intent did, then and there, wilfully, unlawfully and feloniously take off her long pants and panty and had sexual intercourse of the undersigned who was then unconscious, as a result of which she sustained the following physical injuries:

* * *

to the damage and prejudice of the undersigned who was deflowered which (sic) unconscious and against her will and consent. [Rollo, pp. 4-5.]

When arraigned on July 5, 1978, the accused, assisted by counsel, pleaded not guilty.

After trial, on March 19, 1979 the then Court of First Instance of Cebu rendered a decision the dispositive portion of which reads:

WHEREFORE, finding the accused Roberto Paragoso guilty beyond reasonable doubt of the crime of rape, he is hereby sentenced to suffer the penalty of reclusion perpetua and ordered to indemnify the offended party, Florentino (sic) Alecha, in the sum of P12,000.00. Costs against the accused. [CFI Decision, p.7; p. 12.]

From this judgment of conviction defendant Roberto Paragoso interposed this appeal assigning the following errors:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE DEFENDANT-APPELLANT ROBERTO PARAGOSO OF THE CRIME OF RAPE ON THE STRENGTH OF THE TESTIMONY OF THE COMPLAINANT AND HER WITNESSES.

II.

THE TRIAL COURT ERRED IN DISCREDITING THE TESTIMONY OF THE ACCUSED AND HIS WITNESSES IN THE LIGHT OF THE INCREDIBILITY AND GROSS INCONSISTENCIES IN THE TESTIMONIES OF THE PROSECUTION WITNESSES.

III.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT. [Appellant's Brief, p. 1; Rollo, p. 53.]

The prosecution's version of the facts, given full credence and as summarized by the trial court, is as follows:

On the night of January 27, 1978, complainant Florentina Alecha, 27 years of age, was in the house of her mother, Restituta Alecha, at Valencia, Carcar, Cebu. In addition to the members of the Alecha family, there were visitors in the house, among whom were Filomena Gellegen, a niece of Restituta, the accused Roberto Paragoso, 31 years old, who is a third cousin of the complainant, Paragoso's wife Aurora, his mother and two small children. The following day, January 28, was the barrio fiesta of Valencia, and that was the reason why Florentina was in her mother's house although she was actually living with her sister . . . in Mandaue City, where she (Florentina) was and still is - a salesgirl at her sister's store. That was also the reason why some relatives of the family were in Restituta's house.

About 11:00 o'clock on the night of January 27, 1978, the complainant went to sleep. She slept at the dining room with her cousin Filomena Gellegen, Aurora Paragoso (wife of the accused), the children and the mother of the accused, and some other persons. The accused slept on a sofa. About 3:00 o'clock on the morning of January 28, the complainant woke up and rose to answer the call of nature. She went downstairs, and since she expected no one to be present there at that time, she did not bother to go to the comfort room located some 10 meters away from the house, but, instead, urinated near the stairs of the house. After urinating, she stood up, pulled up her panties and zippered her pants, but before she could button (sic) up her pants, somebody came from behind and covered her mouth with his hand. She looked back and saw the accused, Roberto Paragoso, whom she could well recognize because of the moonlight. She struggled and attempted to shout, but she could not shout because her mouth was held by the accused. Then she was boxed by the accused in her midsection (stomach), after which she lost consciousness.

About 6:00 o'clock on the morning of that day, January 28, 1978, the complainant's sister, Josefina, noticed the absence of the complainant from the house. She apprised her mother Restituta of the fact, and the mother and other members of the family as well as Filomena Gellegen went down the house and looked for the complainant. Restituta saw her daughter lying unconscious on the ground some 35 meters away from the house. The complainant was wearing T-shirt and pants, but both were inverted; her panties were on her left side. Restituta called for help, and Filomena came and helped her take the complainant to the house. They tried to revive her; the complainant came to (sic) about 10:00 o'clock that morning. The complainant asked them where her watch was; they answered that they did not know. Restituta and Filomena went downstairs to look for the watch, and there they met the accused, who told them not to look for it because he had it in his house, although he did not say why. Three days later, Restituta, accompanied by her daughter Anecita, went to Paragoso's house some 200 meters away from Restituta's house and asked the accused why he did not return the watch, and the accused answered that he was trying to see if Florentina could remember where her watch was. The accused gave the watch, and when Restituta and Anecita left the house, the accused and his wife Aurora were quarelling because Aurora became mad when she found out that her husband had kept

Florentina's watch.

In the meantime, although the complainant had regained consciousness on the morning of January 28, 1978, she felt very weak, and she experienced pains in different parts of her body, including her private parts. She had to stay in the room the whole day. It was only the following day, or on January 29, that the complainant narrated to Restituta the incident and told her mother that she had been raped by Paragoso. The family was expecting the complainant's father to arrive from Mindanao on February 3, and when he did arrive on that day, Restituta told him that their daughter Florentina had been abused. The father was understandably mad, and he, Restituta, Filomena and one Inday Maria went immediately to Barangay Captain Pantaleon Regis to report the incident. The latter advised them to go to the Chief of Police of Carcar. On February 4, they saw the Chief of Police, who, however, told them that he could not accept the complaint because the complainant was already 27 years old. Upon the advice of the Mayor of Carcar, Restituta, her husband, complainant Florentina, and Filomena went to the Office of the Provincial Fiscal, and there they talked with Assistant Provincial Fiscal Loreto E. Abarquez.

On February 6, 1978, Dr. Ceferino Y. Cunanan, Supervising Medico-Legal Officer of the National Bureau of Investigation, Visayas and Mindanao Region, examined the complainant. After the examination the doctor told Florentina that she had been raped. . . . [CFI decision, pp. 2-4; Rollo, pp. 7-9.]

* * *

Appellant Roberto Paragoso and his witnesses, on the other hand, give a different version of the incident, as follows:

Accused . . . testified that he knows complainant . . . because they used to go together to fiestas and sometimes to the creek. On January 27, 1978 in the evening, he was in the house of Restituta Alecha because he attended the prayers at the latter's house. After the prayers he ate together with the other guests and afterwards they had some merriment. Florentina Alecha was also there. The merriment lasted up to 12:00 midnight. At about 1:00 he went downstairs with Florentina as per their agreement. They went a little bit further (sic) from the house at a distance of about 40 meters where they made love to each other until almost 5:00 in the morning. After their lovemaking they went to their respective homes. Later on he went back to the house of Restituta Alecha to fetch his wife and children who slept there. When he went back that morning he did not notice anything unusual in the house. Restituta asked him about Flor's watch but he answered he did not know about it. He did not know that he was being accused of rape until he was arrested on the 6th of February 1978. After January 28, 1978, he used to see Restituta everyday. On February 2, 1978 she (sic) brought some sand and seafoods to Restituta's house. On that day, Restituta told him that she is accusing her brother, Teodoro Paragoso of having raped her daughter, Florentina. On cross-examination, Roberto admitted that he and Florentina are sweethearts before he got married and they are still sweethearts up to the present. (TSN, Javier November 13, 1978 pp.1-8).

Teodoro Paragoso, brother of the accused, testified that he knows Flor because she is their neighbor; that on January 27, 1978 in the morning he was in Tuta's place because he brought kettles there because it is their fiesta. He ate his breakfast and lunch there and went home at 1:00. On February 1, 1978 he passed by Restituta's house. The latter invited him into the house and told him that Flor is stupid because during the fiesta she (Flor) went out to buy pants and dresses and Roberto Paragoso was with her and he must have abused her. And he answered "you cannot blame me Nang because I have already advised you and I also told Flor and Roberto that they will not be going together especially during nighttime to bring tuba at our place." On February 6, 1978 in the morning he was in the Municipal Bldg., and he was informed by the police that Restituta Alecha had filed a case against him about a "shouting incident". He confronted her about this and Restituta told him that the case was dismissed already. (TSN Javier October 30, 1978, pp.1-6).

Mrs. Trinidad Bacus testified that on January 28, 1978 she was in Restituta's house because it was fiesta. She arrived, at her house at 9:00 A.M. There was merrymaking inside the house. She did not observe any unusual incident in the house. She went home at 12:00 noon. (TSN, Oct. 13, 1978, pp. 1-5).

Mrs. Aurora Paragoso wife of the accused, testified that she knows Florentina when she got married to Roberto. Flor was always in their house because she is a cousin of Roberto. On the evening of January 27, 1978 she was in the house of Restituta Alecha because she led the prayers. All the members of the family were there including Flor. After the prayers they ate; Afterwards there was an amateur singing and dancing. She slept at 2:00 A.M. because the celebration continued even past midnight. She slept in the dining room with Filomena Gellegen. Before she went to sleep, Roberto and Florentina were still singing; Roberto was accompanying her with his guitar. They went on singing until 3:00 A.M. Roberto used to accompany Flor on his guitar everytime she requested him during amateur singing contest; She woke up at about 4:00 A.M. when she heard Filomena waking up her husband. She stood up to urinate at the bedpan. She could not sleep anymore until 5:00 A.M. when her husband, Roberto came to fetch her of (sic) their 2 children. They went home and had their breakfast. They went back to Restituta's at 9:00 because it was fiesta. When she came back to Restituta's house there was more merrymaking, singing and dancing. She did not notice anything unusual going on inside the house. She first came to know about Florentina's being raped on February 6, 1978. [Appellant's Brief, pp. 6-8; Rollo, pp. 58-60.]

Confronted with two contrasting narrations of facts, the question that presents itself before the Court is, which version is more credible.

After a close examination of the record, the Court finds the prosecution's version worthy of credence and affirms the finding of guilt by the trial court.

Rape is committed by having carnal knowledge of a woman under any of the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and, (3) when the woman is under twelve (12) years of age, even though neither of the circumstances mentioned above are present [Article 335 of the Revised Penal Code.]

In the case at bar, the complaint filed by Florentina Alecha [Rollo, p. 5] and the decision of the trial court [Rollo, p. 11] impute to defendant-appellant the commission of the crime of rape by force and/or when the woman is unconscious. A reading of the record of this case reveals that rape was committed by defendant-appellant through the use of force and intimidation (par. 1 of Art. 335) the complainant's becoming unconscious being incidental. Defendant-appellant, to make the complainant submit to his desire, boxed her in the stomach, causing her to lose consciousness. As complainant stated in her testimony:

* * *

Q While you were passing water under your house on that date and time, what happened?

A

After I urinated I fixed my pants and my panty and it was at that time when I was held or when I have held my pants in the waist line and my mouth was held because I wanted to shout since I wanted to get from his hold, I was boxed on my stomach.

* * *

Q From then what happened after you were boxed in the midsection of your body?

A I fainted.

* * *

Q What was your position when Roberto Paragoso covered your mouth?

A He held my shoulder and held my mouth and when I was wrestling out he boxed me on my stomach.

* * *

Q Now, which came first the boxing or the covering of your mouth?

A The covering of my mouth.

Q Did you struggle in order to be released from the hold of the accused?

A Yes, sir.

Atty. Moreno:

Q Did you not shout?

A I shouted but he covered my mouth so my voice did not come out. [TSN, October 3, 1978, pp. 1-2, 8; Emphasis supplied.]

* * *

Adding credence to complainant's testimony is the medical certificate issued by Dr. Ceferino Cunanan attesting to the physical injuries she suffered, thus:

GENERAL PHYSICAL EXAMINATION:

* * *

Physical Injuries: - Abrasions, multiple, with scab formation: interscapular region, left side, 0.3 x 0.2 cm. and 0.4 x 0.2 cm.; lower back, along the vertebral region, 1.2 x 0.5 cm., 1.6 x 0.7 cm., and over an area 6.0 x 2.0 cms. with the biggest measuring 1.0 x 0.5 cm.; buttock, left side, 1.0 x 1.0 cm. with slight epidermal denudation.

GENITAL EXAMINATION:

Pubic hairs fully grown, abundant in number. Labia majora slightly pigmented and gaping. Labia minora assymetrical, the left side markedly redundant protruding between the labia majora while the right side is short and covered by the corresponding labia, both markedly pigmented. Fourchette lax. Vestibular mucosa pinkish with an area of congestion at the left posterior portion. Hymen originally annular short, with an old healed laceration corresponding to 5:30 o'clock position, edges of which are rounded and fairly coaptable. Orifice admits a glass tube with an external diameter of 2.5 cms. diameter with moderate resistance but will not admit a tube of 3.2 cms. diameter. Walls of vaginal canal tight. Rugosities fairly obliterated. Cervix big and hard.

CONCLUSIONS: 1.

Physical injuries described above were found on the subject at the time of examination.

2.

Medical evidences present consistent with sexual intercourse with man compatible with the alleged date of on or about 28th of January 1978.

[Exhibit "A"] (Emphasis supplied.)

* * *

Defendant-appellant, on the other hand, would aver that he and Florentina Alecha are sweethearts [TSN, Nov. 13, 1978, p. 18] and they have performed the sexual act even before January 28, 1978 [TSN. Nov. 13, 1978, pp. 12-13.] This defense, however, is devoid of merit. Complainant, who impressed the trial judge with her "formality, seriousness and truthfulness and the absence of any indication of coquetry or flirtatious proclivity which the accused would want to attribute to her" [Rollo, p. 11], vehemently denied this in her rebuttal testimony, thus:

DIRECT EXAMINATION BY ATTY. ALDEMITA:

Q

The accused here Roberto Paragaso declared that the sexual intercourse he had with [you] on January 28, 1978 was not the only one or was not the first time that he had with you, is that true?

A No, sir. That is not true.

Q He had also declared prior to that incident of January 28, 1978 he had several sexual intercourse with you is that true?

A That is not true. That is a lie.

Q The accused also declared that before he got married you were sweethearts?

A No, sir. That is not true because we were not sweethearts.

* * *

Q The accused here declared that even before he got married you were already sweethearts, is that true?

A That is not true because we never have been sweethearts.

Q And that those days when you were sweethearts you have already several sexual intercourse is that true?

Atty. Moreno:

Objection, your honor, already answered.

Atty. Aldemita:

Q That the accused has also declared that even when he got married you were not separated as sweethearts, is that true?

A

Those are all lies because we were not sweethearts. [TSN, February 27, 1979, pp. 1-2; Emphasis supplied.]

* * *

Further, other than his self-serving testimony, defendant-appellant's claim of intimate relationship with Florentina Alecha is not substantiated by any other evidence on record [People v. Soterol, G.R. No. 53498, December 16, 1985, 140 SCRA 400, 405; People v. Manzano, G.R. No. L-38449, November 25, 1982, 118 SCRA 705,

716-717.] The testimony of Teodoro Paragoso, that Restituta Alecha could not blame him for the rape of Florentina as he already advised her not to allow her daughter to go with Roberto Paragoso to his house on Sundays [TSN, October 30, 1978, pp. 4 and 11], is not indicative of any amorous relations between the complainant and defendant-appellant. At best, said testimony merely hinted at a possible relationship between the parties and is not corroborative of his brother's defense.

Even assuming that there was an amorous relationship between the complainant and Roberto Paragoso, a married man, the occurrence of the crime of rape is not negated by such illicit relationship. As this Court had occasion to state in another rape case:

* * *

Admitting that the appellant had been having illicit relations with the offended party for months before the time and place mentioned in the complaint, yet, nevertheless, that fact would not constitute a defense, providing the illicit relations, which are described in the complaint, took place by force and violence and against the will of the offended party.

The fact that Maria Bernales may have been an unchaste character constitutes no defense of the charge of rape, providing it is proved that the illicit relations described in the complaint were committed with force and violence. The appellant is equally guilty under the law, if force and violence were used, regardless of the good or bad morals of Maria Bernales. (People vs. Hartman, 103 Cal., 242; McClain on Criminal Law, vol. 1, sec. 460 and cases cited.) [People v. Blance, 45 Phil. 113, 116 (1923); Underscoring supplied.]

* * *

To support his claim of innocence defendant-appellant next questions the credibility of the prosecution witnesses.

Firstly, defendant-appellant claims that it is highly improbable for complainant to have remained unconscious for seven (7) hours after she was allegedly boxed by him [Rollo, pp. 60-61.]

Not to be lost sight of however is the fact that Florentina Alecha, as attested to by Dr. Cunanan is a poorly developed and poorly nourished woman who stands 57.5 inches or 146.0 centimeters and weighs 78.5 pounds or 35.7 kilograms [Exhibit "A".] This is corroborated by the trial judge who made the observation that complainant is a "small woman, light of weight, and apparently poorly developed" [CFI Decision, p. 4; Rollo, p. 9.] This physical condition of the complainant does not make it improbable for her to have remained unconscious from the time she was boxed in the stomach at approximately 3:00 o'clock in the morning until she regained consciousness at about 10:00 o'clock in the morning of that same day.

Further, the testimonies of her mother, Restituta Alecha, and her cousin, Filomena Gellegen, that they saw her lying on the ground some thirty-five (35) meters from the house, unconscious as if dead, with her T-shirt and pants worn inverted and her panty lying at her left side, was not rebutted by the defense [TSN, October 9, 1978, pp. 2-3, 9,13-14, 16.]

Roberto Paragoso would moreover rely on the testimony of defense witnesses who claimed they did not notice anything unusual in the house of Restituta Alecha on the morning of January 28, 1978. But neither did these witnesses testify that they saw Florentina Alecha on that morning. The Alechas having kept quiet about the incident on the day of the barrio fiesta is not inconsistent with the tendency of Filipinos to conceal embarrassing incidents until such time that the family has reached a consensus on the course of action to be taken [People v. Marzan, G.R. No. 63265, March 13, 1984, 128 SCRA 203, 215, citing People v. Jose, et al., 93 Phil. 1017, 1021 (1953).]

Secondly, Roberto Paragoso maintains that from the complainant's testimony it can be deduced that the sequence

of events from the time he allegedly grabbed her from behind until the time he boxed her happened so quickly that it would have been improbable for her to have recognized him [Rollo, p. 61.]

Florentina Alecha's testimony, on the other hand, remains un rebutted that the night of the incident was moonlit [TSN, October 3, 1978, p. 6] and that she was able to glance at him [TSN, October 3, 1978, p. 8] thus enabling her to recognize defendant-appellant as the one who held her from behind. Further, it would not be difficult for complainant to recognize defendant-appellant as they are distant cousins who have known each other since childhood [TSN, October 3, 1978, p. 4.]

Moreover, Roberto Paragoso's theory that it would have been impossible for the complainant to have recognized him on the night of the incident is inconsistent with his main defense that no rape occurred but that the same was a result of their mutual consent.

And lastly, defendant-appellant likewise points to the conduct of complainant Florentina Alecha and her mother Restituta as indicative of his innocence. Particularly, he cites the fact that Restituta, after finding out from him that he had the complainant's watch, did not even bother to inquire how he came to possess the same. With respect to Florentina Alecha, defendant-appellant argues that it is rather unusual for an alleged rape victim to have told her mother of the crime a day later. He concludes that perhaps it is complainant's father who, embarrassed by his daughter's behavior, took the initiative of filing this criminal complaint to save the family reputation [Rollo, p. 62.]

That Restituta Alecha did not immediately inquire from defendant-appellant how he came to have in his possession Florentina's wristwatch can be explained by the fact that she was distraught and confused after her daughter was found unconscious in a disheveled appearance. Thus, when Roberto Paragoso failed to return the watch she went to see him to demand Florentina's wristwatch [TSN, October 9, 1978, p. 4] three (3) days after the incident.

On the part of the complainant, it must be remembered that she regained consciousness only on the morning of January 28, 1978, without any idea as to what happened to her after she was boxed by defendant-appellant. She came to the conclusion that she may have been raped by Roberto Paragoso when she woke up the following day feeling faint with pain all over her body including her private parts [TSN, October 3, 1978, p. 2.] Thus, it was only on the following day or on January 29, 1978 that she related to her mother the incident and her belief that she may have been abused by defendant-appellant [TSN, October 9, 1978, p. 11.]

Defendant-appellant Roberto Paragoso has failed to make out an exception from the well-established rule on the credibility of witnesses that findings of the trial court, which had the opportunity to see, hear and observe the conduct of the witnesses, are entitled to the highest respect absent any showing that the trial judge ignored or overlooked facts that would warrant a different conclusion [People v. Velasco, G.R. No. L-31922, October 29, 1976, 73 SCRA 574; People v. Villamala, G.R. L-41312, July 29, 1977, 78 SCRA 145; People v. Malate, G.R. No. L-40791, September 11, 1982, 116 SCRA 487; and People v. Gamboa, Jr., G.R. No. 73463, October 28, 1986, 145 SCRA 289.]

WHEREFORE, the decision of the trial court is hereby AFFIRMED with the modification that the indemnity awarded is increased to P30,000.00.

SO ORDERED.

Fernan, Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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