

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLITO DUNCA (DUNGCA) Y FORNILOZA,
DEFENDANT-APPELLANT.**

G.R. No. 51084. December 26, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

Charged with and prosecuted for RAPE before the then Court of First Instance of Laguna under Criminal Case No. 974-SP, CARLITO DUNCA was, after trial following a plea of not guilty upon arraignment convicted, and thereafter sentenced to reclusion perpetua; to indemnify the offended party in the sum of P12,000.00 as moral damages without subsidiary imprisonment in case of insolvency; and to pay the costs.

Assailing the judgment of conviction against him, Dungca appealed to this Court contending that the trial court erred:[1]

1. In giving credence to the testimony of Noleña Catapang despite serious inconsistencies and inherent incredibility;
2. In not giving due weight and credit to the testimony of defendant-appellant and Ofelia Gaddi Quiambao; and
3. In finding defendant-appellant guilty beyond reasonable doubt of the crime charged notwithstanding the absence of sufficient evidence to convict.

The prosecution's version of the incident that gave rise to appellant's conviction, as aptly summarized by the Honorable Solicitor General in the appellee's brief,[2] runs thus -

"x x x complainant, Noleña Fernandez Catapang, was a 30-year old housewife with two minor children, who lived at Barrio San Lorenzo, San Pablo City, at the time of the incident (p. 2, tsn, March 28, 1978). On the other hand, the appellant, Carlito Dunca, a 31-year old married man lived in the same neighborhood. (p. 2, tsn, December 19, 1978).

In the evening of December 21, 1977, the complainant, with her six-year old daughter and a seven-month old son, were asleep in the small sala of their house. Complainant's husband at the time was at work on a night shift in Barrio Wawa. At about ten o'clock of the same night the complainant was awakened by the sound of their window being opened. She quickly sat up, saw the appellant clad only in his briefs, enter the window, approach her and point an 8-inch bladed weapon (itakan) at her neck. The appellant threatened her, told her not to shout otherwise, he would kill her and her children (pp. 2-10, tsn, March 28, 1978).

Her six-year old daughter, awakened but terrified by the appellant's verbal and physical threats, bowed her head down to the floor. Then the appellant dragged the complainant to the wall near the small room where family clothing and household things were kept. There, the appellant threw her against the wall which caused a contusion in her arm, and banged her head against it. The complainant struggled with the appellant, but the latter subdued her with a knife poked at her. The appellant succeeded in forcing her down to a lying position, and pulled down

her panty. He then removed his brief and sexually abused her. The act having been consummated in 2 to 3 minutes, the appellant threatened her not to shout nor to tell her husband, otherwise, he would kill her and her children. The appellant left through the same window wherefrom he entered. (Pages 11-19, tsn, id.)"

Early in the morning of the following day, complainant's husband arrived. She then reported to him the sexual abuse perpetrated upon her by the herein appellant after which they immediately proceeded to the barrio captain of their place and reported the incident in question. The following day, accompanied by her husband, she went to the San Pablo City Hospital where she was medically examined. Thereafter, complainant was investigated by police investigators of the San Pablo City Police where her statement was taken down in writing.[3]

While admitting having been in the house of the complainant on the night of the incident in question, appellant denied having any carnal knowledge of the offended party and more especially under the circumstances narrated by the latter. He claimed that he was at home in the evening of December 21, 1977 attending to his sick wife[4] when Ofelia Gaddi, a townmate of his, arrived at their place and informed him that the complainant wanted him to see her.[5]

Considering the on-going intimate relationship he has with her (complainant Noleña Catapang) he then proceeded to the latter's house at about ten o'clock in the evening, and there they started making love thereby embracing each other, when one of the complainant's children was awakened. Fearful that their relationship might be discovered, he immediately left complainant's place.[6] In the afternoon of the following day, he met complainant at the store of Placido Esconde in their barrio and on that occasion, complainant told him that she was merely forced to file the charge against him because her husband has threatened to kill her[7] as in fact, he has already started mauling her.[8]

Appellant's three (3) assignment of errors may be synthesized into the main issue of whether or not the evidence on record sufficiently established his guilt beyond reasonable doubt.

Since appellant admitted having been in complainant's place at the time and date narrated by the prosecution, all we have to determine now is...whether or not he was there because allegedly there was an "unawaan" or understanding between them; and whether or not complainant really sent for him through a certain Ofelia Gaddi.

Appellant asserts that his amorous pursuit towards complainant began not in earnest but merely as a joke. He declared that all his meetings with the complainant took place by the river at times when complainant was washing their dirty clothes. They have met in that place not only once but on several occasions; about ten times, more or less.[9] Considering the frequency of their meetings, a lot of people must have seen them talking animatedly to each other, sufficient enough to create even suspicion and rumors about their alleged on-going relationship. More so, if it has to be considered that their place was a mere simple barrio, where an event taking place in one sector thereof must and is generally known throughout the entire barrio. Surprisingly enough, however, his testimony on that regard stood uncorroborated. No one, say a barriomate of theirs, appeared to have been presented by him to corroborate and lend a color of validity to his aforesaid "unawaan" story. In fact, not even Ofelia Gaddi, a relative of his, who was allegedly requested or sent to him by the complainant[10] seemed to know about this concocted amorous relationship he now claims. This is clear from Ofelia's testimony, the pertinent portion of which runs as follows:

"Q You are not aware if there was any relationship between Noleña and Carlito? Is that correct?

A None, sir."

Furthermore, we note that Ofelia is not sufficiently known to, much less is she an intimate acquaintance of the complainant. In short, she is not a confidant of the complainant. Why then will the latter entrust such a delicate

and perilous mission to her thereby risking discovery of the illicit affair she has with another man thus inviting trouble with her husband? The defense evidence offered no explanation whatsoever. And yet, appellant would like to impress us that complainant have thrown all cautions to the wind. It has been repeatedly held that -

"Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of juridical cognizance."[11]

But what puzzles Us no end and very disturbing at that, is the manner by which appellant gained entrance into the premises of the complainant - which was through the window. It was also through the same point where he made his exit in leaving complainant's premises after the criminal affront against the complainant. And this had not been rebutted nor contradicted. Certainly, such a circumstance militates very heavily against the authenticity of appellant's story. If his story is true, that he and complainant are lovers - then the victim's place must be especially open for him and he must have been received by her with open arms and welcoming hands. Not only that. Being lovers and since it was complainant who sent for him purposely to engage in an amorous undertaking, the complainant must have put off the light in her house in order to prevent his presence being detected and/or discovered by anyone including her children, both of which circumstances do not seem to support appellant's pretense.

To bolster his thesis that this charge of RAPE levelled against him is not genuine but a mere fabricated one, appellant declared that it was complainant herself who told him, when they met at about 4:00 o'clock in the afternoon of December 22, 1977, the day following the incident in question, that she was merely forced by her husband who threatened to harm her if she failed to do so, to file the instant case. That meeting allegedly took place at the store of Placido Esconde in their barrio which is not far from the house of the complainant. Again, this claim is so barren with no corroboration whatsoever. Placido Esconde was never presented nor the person tending his store at that time to testify even on that meeting alone. Other than the appellant, no other person was presented by the defense. Besides, the probability of the said meeting having taken place appeared too nil. At that time, December 22, complainant had already reported the incident to the Barrio Captain of their place who, together with complainant and her husband, even went to the appellant's place to in-vestigate the charge levelled against him. Unfortunately, however, appellant could nowhere be found in his place. The Barrio Captain left words for the appellant to see him. But said instruction was ignored and never complied with. Such an act is decidedly repugnant to innocence. A confrontation with the complainant in the presence of her husband and the barrio captain should not have been merely welcomed by the appellant but demanded or at the very least requested by him for that was his golden opportunity to contradict and belie the truth of the charge lodged against him. His negligence and/or fear to face the authorities in connection with the crime imputed against him generates well grounded belief in the truth of the accusation.

In the assessment of the evidence, the trial court came out with the following observations:

"The complaining witness in this case testified in a straightforward manner. No part of complaining witness' testimony can be faulted as incredible or not conformable to the knowledge and common experience of mankind. (People vs. Baquiran, L-20153 from June 29, 1967, 20 SCRA 451; People vs. Dayag, L-30619, March 29, 1974, 56 SCRA 439). She was not able to shout for help during the perpetration of the rape or immediately thereafter because she was overcome by fear and by the threat of the accused on her life and the lives of her children, threat made convincing by the accused pointing the "itakan" at her neck. Similarly, she did not immediately reveal the identity of her assailant for the same reason of fear.

On the other hand, the defense of the accused that his presence there in the house of complaining witness on the night in question was upon the invitation extended to him by the complaining witness is shot full of contradictions and inherent incredibility. Thus, the accused Carlito Dunca testified that earlier in the evening of the day in question, Ofelia Gaddi went to see him and relayed to him the message of complaining witness that he should go to the latter's house at 10:00 o'clock that night. Ofelia Gaddi Quiambao, corroborating the accused's testimony, when asked what precisely Noleña told the witness, answered: Pakisuyo na sabihin mo kay Carlito pumunta sa amin." Strangely, no date and time was mentioned and the accused acting on this message would not know when he is supposed to see complaining witness." [12]

We are in full accord with the court a quo's above pronouncement.

Having heard the witnesses, the trial court was in a better position to assess their credibility. And, as a general rule, highest respect should be accorded its findings and conclusions. [13] A judicious review of the records of this case failed to show or indicate any circumstance of note which the trial court overlooked sufficient enough to serve as a basis for nullifying the aforesaid findings and conclusions.

In convicting the accused-appellant, the trial court imposed upon him an indemnity in the amount of P12,000.00 only. That should now be increased to P30,000.00. [14]

WHEREFORE, and except as thus modified, the judgment appealed from is hereby AFFIRMED. Costs against appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Abad Santos, and Escolin, JJ., concur.

[1] Pages 6-7, Appellant's Brief.

[2] Pages 3, 4 and 5.

[3] Pages 20-22, TSN, March 28, 1978.

[4] TSN, December 19, 1978, Pages 14-15.

[5] TSN, January 11, 1978, Pages 5-7.

[6] TSN, December 19, 1978, Pages 5-7; TSN, July 6, 1978, Pages 35-38.

[7] TSN, January 11, 1979, Pages 11-12.

[8] TSN, December 19, 1979, Pages 8-9.

[9] TSN, January 11, 1979, Page 9.

[10] TSN, January 11, 1979, Page 16.

[11] Castañares vs. CA, 92 SCRA 167; People vs. Nicanor Alvarez, 109 Phil. 241, 250; People vs. Dayang, L-30619, 56 SCRA 440.

[12] Pages 5 & 6, Records.

[13] People vs. Brioso, 37 SCRA 336; People vs. Beraces, 38 SCRA 127; Castillo vs. Court of Industrial Relations, 39 SCRA 75; De la Paz vs. De Guzman, 43 SCRA 384; People vs. Ancap, 43 SCRA 437.

[14] People vs. Daing, G.R. No. L-40576, Nov. 29, 1984; People vs. Belarmino, G.R. No. L-46204, Nov. 29,

1984; People vs. Resano, G.R. No. 57738, October 23, 1984.

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