

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS MONTEZ Y NUBLA, DEFENDANT-APPELLANT.

G.R. No. 54439. November 02, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Appeal from the decision of the Court of First Instance of Rizal convicting Jesus Montez y Nubla of the crime of abduction with rape, and sentencing him to reclusion perpetua and ordering him to pay an indemnity of P10,000.00 to complainant, Elizabeth Ligon, with costs.

The evidence for the prosecution consists solely, or at least mainly, of the testimony of complainant, Elizabeth Ligon, which tended to prove the following facts, as quoted from the People's brief:

"The complainant, Elizabeth Ligon, at the time the events in this case transpired, was a cashier at the Bulwagang Pilipino at the Magal-lanes Commercial Center in Makati. Jesus Montez, who is the accused and appellant in this case, was a waiter in the same establishment. Thus, the complainant and appellant were co-employees in the same establishment (pp. 10-12, 27, tsn., July 27, 1978; p. 4, tsn., Feb. 7, 1979; p. 2, tsn., March 6, 1979).

"On December 7, 1977, at about 4:00 o'clock A.M., Elizabeth Ligon left Bulwagang Pilipino to proceed to the Iglesia ni Kristo Chapel in San Juan, Metro Manila (pp. 11-13, tsn., July 27, 1978). She took a bus and alighted on Reliance Street where she was to take a taxi for San Juan. As she was boarding a taxi, the appellant, who had apparently been waiting on Reliance Street, forced the complainant to ride with him in the same taxi. Although complainant became mad and had cursed the appellant, he succeeded in forcing himself to ride with the complainant in the same taxi (pp. 15-18, *ibid*). Resignedly, the complainant told the taxi driver to proceed to San Juan. The appellant, however, when they reached the vicinity of the Jose Rizal College on Shaw Boulevard, ordered the taxi driver to turn the taxi back. The taxi driver obeyed the appellant in spite of the complainant's plea to the contrary (pp. 20-22, 25, *ibid*).

"On the appellant's direction, the taxi proceeded then to Cubao, Quezon City, near the Farmer's Market. The complainant tried to alight from the taxi, but the appellant prevented her by force (pp. 24-26, *ibid*). The taxi proceeded back to Makati, through streets unknown to the complainant until finally, it stopped in front of what looked like apartments (p. 2, tsn., Sept. 6, 1978). Forcibly, the appellant pulled the complainant out of the taxi and forced her towards the apartment. The appellant boxed the complainant a number of times to coerce her to obey him (p. 2, tsn., Sept. 6, 1978). Asked where he was taking the complainant, the appellant pretended that they were going there for a talk (p. 11, *ibid*). The complainant was then forced to enter a room and then, to lie on the bed (pp. 12-13, *ibid*). When the complainant was thus on her back, the appellant mounted her, forcibly removed her underwear, raised her skirt and as forcibly, pushed his private part into hers, causing her extreme pain (pp. 3-4, tsn., Sept. 6, 1978). The complainant, all through the ordeal, had pleaded, cried, shouted and inflicted fist blows to repel appellant's sexual assault (pp. 3-4, 12, *ibid*). But to no avail because of the appellant's physical assault on her person (pp. 2-4, 14-15, *ibid*).

"Contusions on the complainant's thighs and arms, later discovered, are eloquent proof of the battering she

received from the appellant (p. 8, tsn., March 24, 1978; pp. 14, 38, tsn., June 7, 1978; pp. 9-18, 20, tsn., Mar. 24, 1978; p. 20, tsn., June 7, 1978). The deep laceration in the complainant's genital organ, found on medical examination, particularly, on her hymen (pp. 26-27, tsn., June 7, 1978), mutely testifies to forcible and unwelcome penetration of the complainant's vaginal canal by the appellant's sexual organ (p. 37, tsn., June 7, 1978)."[1]

Appellant's version is given in his brief which may, likewise, be quoted as follows:

"Prior to December 7, 1977, defen-dant-appellant Jesus N. Montez hereinafter called Montez, and complainant Elizabeth Ligon, hereinafter called Ligon, were both working at the Bulwagang Pilipino, Magal-lanes Commercial Center, Makati, Metro Manila, the former as waiter with working hours of from 5:00 p.m. to 1:00 a.m., and the latter as cashier with working hours of from 4:00 p.m. to 2:00 a.m. Beginning in September 1977, Montez started to court Ligon, and on November 4, 1977, according to Montez, they became sweethearts. During said courtship up to December 7, 1977, Montez used to accompany Ligon at least twice a week in going home to Mandaluyong, Metro Manila and, upon Ligon's request, in attending choir practice at the Iglesia ni Cristo Chapel in San Juan, Metro Manila, to which she and her family belonged. However, he never got to see her family because Ligon had warned him that her father would be mad at her if he saw her accompanied by someone not belonging to their sect.

"While his work ended at 1:00 a.m., and that of Ligon at 2:00 a.m., Montez and Ligon used to sleep at the Bulwagang Pilipino and leave for home only at 4:00 or 4:30 in the morning.

"At about 4:30 a.m. on December 7, 1977, Montez and Ligon left Bulwagang Pilipino to attend a choir practice at the Iglesia ni Cristo Chapel in San Juan, Metro Manila. On the way, Ligon decided not to attend the choir practice after all, saying that she was already late anyway. However, Ligon did not want to go home as it was still early, and she was afraid that her father might learn that she did not attend the choir practice in the chapel and scold her. She, therefore, suggested that they instead eat breakfast to pass the time, so that her father would not know that she did not attend the choir practice. They took their breakfast at the Aristocrat Restaurant near Farmer's Market in Cubao, Quezon City. At the restaurant, after some hesitation on the part of Montez, Ligon prevailed upon him to elope with her, and they agreed to go to a motel in Pasay City where they stayed from about 6:30 to about 10:30 in the morning. From the motel, they proceeded to the house of their co-employee, Mrs. Teresita Mabunay, in Taytay, Rizal, and passed the day there. That evening, all three went to Bulwagang Pilipino to fetch another co-employee, named Ramon Sarmiento, who took Montez and Ligon to his house in Binan, Laguna. At the request of Montez, Ramon Sarmiento informed Mrs. Florinda Villanueva, sister of Montez, about the elopement of Montez and Ligon. Mrs. Villanueva in turn, also at the request of Montez, notified Ligon's father of the elopement.

"On December 9, 1977, Ligon's father, Montez's sister and her husband went to the house of Ramon Sarmiento in Binan, Laguna to fetch Montez and Ligon. On the suggestion of Ligon's father, they proceeded to the Municipal Building of Mandaluyong, purportedly to notify the authori-ties there that he had found already his daughter whom he had reported earlier to have been lost, and to arrange the wedding between Montez and Ligon. When they arrived at the Mandaluyong Municipal Hall, Ligon's father left Montez, Mrs. Villanueva (Montez's sister) and her husband in the parking space while he went inside the building. After a while, Ligon's father came back with three other men who thereupon arrested and detained Montez on the pretext that there was a rape case pending against him. Montez has been incarcerated since then, unable to put up the P30,000 bail imposed by the court, but it was not until December 12, 1977, or two days later, that a complaint was formally filed against him for abduction with rape."[2]

The Court is, thus, made to choose which of the conflicting version merits more credence and to pronounce appellant guilty or not accordingly.

The claim of abduction can hardly induce credence. From com-plainant's own testimony no one had aided

appellant in such a daring venture. By himself alone, and single-handedly, appellant could not have entertained any chance of success, without even a vehicle of his absolute control with which to accomplish a dangerous undertaking. It would seem then that the supposed rape having been committed in a motel, abduction had to be made to appear as having preceded the ravishment to give the rape color of truth. Without it, the place of the sexual intercourse would not induce belief in the employment of force and violence as the means with which it was performed. Consent on the part of complainant to what had taken place would easily emerge as having characterized everything she did, or her participation in all that occurred between her and appellant, negating her claim of force in her being brought to the motel, and violence in the abuse of her person.

Other circumstances tend to lend more credibility to the version of the appellant which presents a simple case of consented elopement. That both appellant and complainant rode in the same taxi from San Juan, Rizal, shows a previous agreement to go together. Only with perfect and faultless timing would appellant succeed in intruding himself into the taxi at the precise moment that complainant was stepping into it, as claimed by the latter. If the taxi was hailed by complainant, as she also declared, the taxi driver should have obeyed her orders as to where they were to go, not the contrary order given by the appellant. And if the driver had observed the supposed struggle inside his taxi, he would most probably have hesitated to drive on except to go to the nearest police station, unwilling to be implicated in the abduction case as was apparent from the supposed resistance put up by complainant. The trip, however, proceeded uneventfully, as the evidence tends to prove, thereby showing that nothing untoward happened inside the taxi.

Appellant and complainant went to Biñan, Laguna, taking a jeep ride from Pasay City. This trip could not have taken place if complainant did not voluntarily go along with appellant. The willingness thus shown does not square with her claim of having been forcibly brought to the motel and there raped. The means of travel taken, with many co-passengers in the jeep used, coupled with the long distance negotiated, afforded complainant easy way of shaking herself off from appellant, or to make known her plight as a captive and get instant rescue therefrom. That complainant did not make use of the clear opportunity to escape from appellant showed her complete willingness to go along with the latter, a feeling utterly incompatible with her claim of having been forcibly brought to the motel where she was allegedly ravished.

Once in the house of their mutual co-employee in Biñan, Laguna, Ramon Sarmiento, complainant would not have consented to sleep in the same bed with appellant if the sexual relation they had in the motel was not with her consent. She should have revealed to the house-owner the ordeal she pictured herself to have gone through, and the owner would certainly not have offered or allowed to have her sleep with appellant together in bed as they did.

Likewise, upon her father's arrival at the house in Biñan, complainant should have revealed her harrowing experience, which certainly should not have led the father to agree to marriage as proposed by appellant. That the marriage was so readily agreed upon indicates that all that had previously transpired were but incidents of an agreed elopement as the father himself found no cause for disbelief. Hence, the party that left Biñan for Mandaluyong where the marriage was to be celebrated included appellant and some relatives of his who otherwise would not have gone with complainant and father to their hometown, Mandaluyong, if the latter manifested hostility and anger, and above all, a manifest intent to denounce appellant for the grave offense of rape. The father's expression of gratitude for the trouble caused to the family to whose house complainant and appellant had gone, is one more proof of the father believing in the reality of the elopement.

The father was fetched by the sister and brother-in-law of appellant at his behest. Appellant would not have done this had he reason to fear that the father would take violent vengeance on him, as would be his natural feeling in a consciousness of having wronged and abused the daughter.

What apparently happened is that the father of complainant, an INC member, could not take appellant into his family, not being of the same sect. He had a change of heart upon reaching Mandaluyong, and decided to frustrate the marriage with a complaint for rape, obviously the best means that presented itself for the purpose right then and there. For, as has been previously stated, the marriage had already been arranged in Biñan yet, the reason the party that left for Mandaluyong included appellant and some close relatives of his.

The copious details in the version of appellant mostly unrebutted by appellant, except by the generally different version she gave, strongly inspire belief in its veracity. These details are narrated by the trial court in reciting appellant's version in its decision (pp. 5-7, Decision). Credible corroboration was given by impartial witnesses, particularly Teresita Mabunay and Ramon Sarmiento, to whose testimonies the Court finds no reason not to accord full faith and credit. Complainant never rebutted their testimony, all tending to prove that everything that transpired between complainant and appellant was fully consented to, all in pursuance to a previous agreement of elopement that came out of two hearts beating with love for each other. Complainant, of course, denies any such relation with appellant. The pictures (Exhs. 1-3) and the letter (Exh. 4) could not have come into the possession of appellant if no feeling of mutual sympathy and affection existed between them as complainant would have it believed. The undisputed fact that marriage had been arranged with the agreement of complainant's father in Biñan, Laguna, can yield no other conclusion than that the two were sweethearts and had actually eloped, so that complainant's father had to resign himself to a fait accompli.

The letter (Exh. 4) which speaks a thousand words in favor of appellant was denied by complainant as her letter. This is practically the only reason she took the witness stand on rebuttal. She should have supported her affirmation that the letter was not of her own making with the aid of an expert witness, say from the NBI, which had then already been resorted to for her physical examination. Having failed to do so, one would naturally incline to believe that the letter was really her own as claimed by appellant whose counsel de oficio painstakingly pointed to similarities in the hand-writing on the letter with the genuine handwriting of complainant. Thus, counsel observed:

"As a matter of fact, even a cursory examination of the letter, taken in relation to Ligon's signature in the complaint filed with the Court of First Instance, will show the great similarity of the two hands. We may point to the distinctive curl of the letter "h" in the two signatures, as well as the great similarity in the formation of the "t". Surely, many more signs of identity will be spotted by an expert from originals, and there should really be no doubt about the authenticity of the letter. This being so, there should be no doubt that Montez is being framed by Ligon's father, and that neither abduction or rape was committed by him."[3]

Only on the basis of contusions found, one of the right arm and two others, each on the thigh, that the trial court believed complainant's story. Again, We are not unimpressed by how appellant's counsel soundly rationalized his theory that these contusions were not inflicted by appellant, but by the complainant's father. Thus -

"Outside of the testimony of Ligon, which is intrinsically incredible, the lower court based its finding of rape on the presence of contusions on the thighs and arm of Ligon. These, however, are not the parts of the body that would normally show injury in case of forcible coitus. On the contrary, these are parts of the body that an angry and violent tempered father, venting his frustration on a daughter who had displeased him grievously on a matter of morals and religion, might very easily injure with his blows. A man bent on sexually subduing a resisting woman would have inflicted paralyzing pain on more vulnerable spots than the right arm and the lap.

"If Ligon had really been raped and deflowered against her will, she would have more naturally shown a disfigured face and all sorts of injuries on her abdomen and other delicate parts of the body. For a rapist is a species of sadist excited beyond reason who does not graciously pick non-vulnerable spots to land his punches. A father who, despite his anger is still unconsciously held back by his paternal love, would instinctively direct his blows to non-vulnerable spots. A rapist would not.

"x x x

"In that meeting in the house in Binan, she finally had to confess to her father that yes, she had eloped; yes, she had been seeing this boy (who was only a waiter) without his knowledge; yes, she had been living with him these past few days; and no, he did not belong to their church. One can only surmise what words he used to upbraid her for going off without benefit of marriage, for the worry and concern she brought him and her mother, and for acting so contrary to the teachings of her church--she who even sings in the choir, and of whom he was so proud.

"Even mothers have been known to act violently towards their daughters in such circumstances. It should not surprise us, therefore, if this concerned father used those classic words, railed against the "worthless" boy who took her away from him--the 'infidel' who could not even set foot in his church--and tried to coerce her to his way of thinking. If, as is probable, they first confronted each other while seated, facing each other, it is easy to see how the contusions, if there indeed were contusions, could probably have been inflicted on the spots where they were allegedly found. That would explain why a contusion would appear on her lap, of all places, and the contusion on the right upper arm would be the mark of his thumb where he held her. A 3cm. contusion could have been inflicted just as easily by a sharply applied thumb as by a punch, or, in the language of the medical report which seems to have confused the trial court, the contusion is 'compatible' with a jab with the thumb."[4]

It is easy to imagine that possibly on the way from Biñan to Mandaluyong, with father and daughter seated side by side, father, still angered by her daughter's disgraceful conduct as it seemed to him, gave vent to his grievously offended feelings with violent impulses as striking her daughter on the thighs and right arm. For the evidence simply would not permit the belief that appellant had to use force and violence in the course of an elopement previously agreed upon, or in performing the sex act, among which is the letter of complainant (Exh. 4) sent to appellant when the latter was already confined. Furthermore, as it developed, although her father at first appeared as consenting to the marriage, he never really got over a desire to punish appellant. So to provide some signs of violence to support a charge of rape, he inflicted the blows on his daughter. In any event, We are not wholly convinced that it was appellant who laid hands on complainant to satisfy his lust.

The Court is, therefore, unable to rest at ease to find appellant beyond all reasonable doubt, guilty of the crime charged--either of the alleged abduction or the rape. This is more so upon consideration of the fact that complainant's direct testimony was never subjected to cross-examination, the right to which appellant never himself expressly waived. It was only because of the non-appearance of his counsel when the complainant's direct testimony was due for cross-examination that the trial court declared against appellant a waiver of the right of cross-examination. This is plain error on the part of the trial court which, under all circumstances, is enjoined to preserve to an accused all his constitutional rights and see to it that they are actually exercised or made used of. This is particularly imperative in a charge as grave as for rape where, as in this case, the lone testimony of the offended party, virtually uncorroborated, is the only basis for conviction. For as has been held:

"Appellant does not deny having sexual intercourse with the offended party but claims that she went and did the acts with him voluntarily. The issue, therefore, is one of credibility. In rape case, the uncorroborated testimony of the offended party may be sufficient under certain circumstances to warrant conviction. But for this rule to obtain, the lone testimony of the woman victim must be clear and free from any serious contradiction, her story must be impeccable and must ring throughout or bear the stamp of absolute truth and candor. (People v. Nebres, 58 Phil. 903).

"This court already observed that the books disclosed 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 sincerity and candor are free from suspicion. A little insight into human nature is of utmost value in judging matters of this kind." (People v. Mendi-guarin, 92

SCRA 679)."[5]

WHEREFORE, the judgment appealed from is hereby reversed, and appellant, acquitted of the crime charged, with cost de oficio.

SO ORDERED.

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

Aquino, J., dissented for reasons stated in the lower court's decision.

[1] pp. 2-6, Appellee's Brief, pp. 92-96, Rollo.

[2] pp. 1-4, Appellant's Brief, p. 78, Rollo.

[3] p. 28, Appellant's Brief, Id.

[4] pp. 15-18, Id.

[5] p. 8, Id.

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