

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO NUNAG, ARNEL MANDAP, ALIAS "BUBOT", EFREN SALANGSANG, DANILO CARPIO AND DIOSDADO MANALILI, ACCUSED-APPELLANTS.

G.R. No. 54445. May 12, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

Accused-appellants Mario Nunag, Arnel Mandap alias "Bubot", Efren Salangsang, Danilo Carpio, and Diosdado Manalili were charged before the Court of First Instance of Pampanga with the crime of Rape committed as follows:

"That on or about the second week of May, 1978, in the Municipality of Minalin, province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design, conspiring and confederating together and mutually helping one another, and armed with deadly weapon by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant Lorenza Lopez, against her will, and in a backyard, near a ricefield.

"All contrary to law, and with the aggravating circumstances [sic] that the said offense was committed at night time."

The complainant, Lorenza Lopez, a resident of Barangay San Nicolas, Minalin, Pampanga, then about fifteen and a half years old, declared that in the second week of May 1978, at about 7:30 o'clock in the evening, she was watching a television program in the house of her neighbor, Carmen Laxamana. She stood outside the house and peeped through an open window. As she was standing there, she saw the accused Mario Nunag, one of her neighbors, coming towards her. Mario Nunag was staggering and appeared to be drunk. The moon was bright and she readily recognized him.

Mario Nunag came to her and asked her to go with him. But she refused, so that Nunag held her by the hand and poked a knife at her stomach and threatened to kill her. Nunag then placed something in her mouth and led her to a nearby ricefield, about 15 meters behind the house of Carmen Laxamana.[1] Very soon thereafter, they were joined by the other accused Arnel Mandap, Efren Salangsang, Danilo Carpio and Diosdado Manalili, who were also very well known to her. After conferring in whispers, Arnel Mandap and Efren Salangsang held her hands, while Danilo Carpio and Diosdado Manalili held her feet, and forced her to lie on the ground. She struggled to free herself, but the accused held her tightly.

Mario Nunag then undressed her and had sexual intercourse with her, at the same time fondling her breasts. She felt pain in her vagina. After Mario Nunag had finished, Arnel Mandap followed. After Arnel Mandap had finished, she lost consciousness and regained it while Diosdado Manalili was abusing her.

Then, the five accused left, after warning her not to report the incident to anybody, otherwise, they would kill her,

her parents and brothers. The complainant felt pains and aches all over her body, especially in her breasts and vagina.[2] She rested for a while and when the pains had somewhat subsided, she went home. She did not report the incident to anybody for fear of what the accused might do to her and her family.[3]

After the incident, the complainant missed her menstruation when it became due and noticed that her stomach was getting bigger. Nevertheless, she did not tell anybody. However, on 4 August 1978, her mother noticed her condition and asked her about it. She did not tell her mother at first, but, when her mother and brothers got angry, she told them that she had been raped by the five accused. They asked her why she did not inform them earlier and she replied that she was afraid because the accused had threatened to kill her and her family if she should tell anyone of the incident.[4]

Lorenza Lopez was brought to the Central Luzon General Hospital at San Fernando, Pampanga, after which a complaint was lodged with the police authorities.[5]

On 10 October 1978, she gave birth prematurely to female twins, baptized Merlin and Maria Lopez who both died after a few hours.[6]

The appellant Mario Nunag admitted having sexual intercourse with the complainant. However, he denied the charge of rape. He also claimed that he had sexual intercourse with the complainant at a date different from that mentioned by the complainant. He declared that at about 9:00 o'clock in the evening of 22 May 1978, while he was sleeping atop a wooden bed at the backyard of their neighbor, Carmen Laxamana, he was awakened by the complainant who touched his penis and embraced and kissed him. He felt lascivious and got the motorcycle of his cousin and brought the complainant to a ricefield in barrio Sta. Rita, Minalin, Pampanga, and had sexual intercourse with her. After the intercourse, the complainant asked him for some money and he gave her P4.00. Then he went home.[7]

The accused-appellant Efren Salangsang also admitted having sexual intercourse with the complainant. He denied the charge of rape. He declared that while he was watching a basketball game on the TV set of Carmen Laxamana on 20 June 1978, the complainant came to him and led him to the backyard of Carmen Laxamana where they had sexual intercourse. He also stated that after the intercourse, the complainant asked for some money and he gave her the amount of P2.50.[8]

The accused-appellant Diosdado Manalili also admitted that he had sexual intercourse with the complainant, but not during the first or the second week of May 1978. He declared that he had sexual intercourse with the complainant at about 9:00 o'clock in the evening of 30 June 1978. According to him, he was in the store of one Tess Carpio when the complainant entered the store and told him that she had something to tell him. She led him to the backyard of Carmen Laxamana and asked him to have sexual intercourse with her. But, he refused. However, the complainant took hold of his penis and he had to capitulate.[9]

The accused-appellant, Danilo Carpio, upon the other hand, denied having sexual intercourse with the complainant at any time, although sometime in October 1976, while he was watching a television program from outside the house of Carmen Laxamana, the complainant came to him and placed her hands inside the pocket of his pants and extracted therefrom some coins amounting to P1.00. After getting the money, the complainant asked him to fondle her breast, which he did.[10]

The accused-appellant Arnel Mandap also claimed that he did not have sexual intercourse with the complainant at any time. He declared that while he had known the complainant for some time, he was not close to her. However, in the evening of 20 June 1978, at about 8:00 o'clock while he was watching a television program through the window of the house of Carmen Laxamana, the complainant who was standing beside him, suddenly took hold of

his penis and invited him to the backyard of Carmen Laxamana. He agreed and when he rejoined the complainant, he found the complainant already lying down on the ground. He lifted her skirt and inserted his finger inside her vagina. He also fondled her breasts. But, when he saw that her stomach was already quite big, he became afraid and left. As he was leaving, the complainant asked him for some money, but he had none to give her. On his way back to the place where he was watching TV, he met Efren Salangsang going towards the backyard of Carmen Laxamana.[11]

However, the trial judge, Hon. Felipe B. Kalalo, found the accused guilty of the charge and sentenced them, as follows:

"xxx accused Mario Nunag, Arnel Mandap and Efren Salangsang to suffer RECLUSION PERPETUA, and upon the accused Danilo Carpio and Diosdado Manalili, who were both above sixteen and below eighteen years of age at the time of the commission of the offense, the indeterminate penalty of from TEN (10) YEARS of prision mayor, as minimum, to SEVENTEEN (17) YEARS AND FOUR (4) MONTHS of reclusion temporal, as maximum, and for all the accused to indemnify the victim Lorenza Lopez in the sum of Eighty Thousand Pesos (P80,000.00) representing moral damages and Twenty Thousand Pesos (P20,000.00) as exemplary damages, all to be paid jointly and severally, without subsidiary imprisonment in case of insolvency; and, to pay the costs.

"Accused Mario Nunag, Efren Salangsang, Danilo Carpio and Diosdado Manalili shall be credited with the time they have been under preventive imprisonment in the service of their sentence pursuant to existing law."[12]

From this judgment, all the five (5) accused appealed to this Court. They assail the trial court for giving credence to the testimony of the complainant, which they claim to be concocted and fraught with irreconcilable contradictions.

There is no merit in the appellants' appeal. We find no cogent reason for altering the trial court's appreciation of the credibility of the testimony of the complainant. Thus, the variance between the testimony of the complainant in court and her sworn statement,[13] as to the exact date when she was raped, if this be so, does not materially affect her main claim that the five (5) appellants had sexual intercourse with her, against her will.

Besides, it would appear that the complainant had no motive whatsoever to testify falsely against the appellants, some of whom were her very close neighbors, and impute to them the commission of so grave a crime.

This Court has consistently held that the testimony of a rape victim as to who abused her is credible where she has no motive to testify against the accused.[14]

It further appears that the complainant is a poor barrio girl, then about 15 years and a half in age when she testified in court, who looked timid and inexperienced in the ways of the world. It is, therefore, quite improbable that she would fabricate matters and thereby undergo the travails of a public trial exposing herself to humiliation and embarrassment by unraveling nasty matters against her virginity by lodging against the appellants so grave and serious a charge, if not true.[15]

Moreover, the complainant was straight-forward and consistent in her testimony and described in detail the manner by which she was dragged by Mario Nunag from the place where she was watching a television program outside the house of their neighbor and brought to a secluded place where she was sexually abused by the five (5) appellants, one after another, without her consent. She could not shout because Mario Nunag had placed something in her mouth and had pointed a knife at her stomach. She could not also escape or run away from her attackers because the appellants held her arms and legs while one of them was abusing her. She could not have been mistaken in identifying the appellants because they are very well known to her and the moon was bright.

The appellants make capital of the failure of the complainant to immediately report the incident to the authorities. But, this failure to report the incident to the authorities earlier had been satisfactorily explained. The complainant declared that she was afraid to report the incident because the accused-appellants, two of whom were her very close neighbors, had warned her not to report the incident to anybody or else she and her family would be killed.

Finally, the accused-appellants contend that it was improbable for them to have raped the complainant in the second week of May 1978, as claimed by her, because she was found to be about 6 to 7 months pregnant when she was examined by Dr. Teresita Santos on 3 August 1978; and 7 to 8 months on the family way when Dr. Ricardo Naguit examined her on 4 October 1978.

This contention is without merit. The findings of Drs. Teresita Santos and Ricardo Naguit cannot be given due weight and credence because the said findings are based upon the supposition that the complainant was carrying only one child in her womb. Dr. Teresita Santos said:

"Court:

Q - In this particular case Dra. you stated that you were able to determine the age of the fetus because of the abdominal size?

A - Yes, Your Honor.

Q - And in your determination you only based on the fact that there is only one fetus inside?

A - Yes, Your Honor."[16]

Dr. Ricardo Naguit declared that had he known that the complainant was carrying twins, his findings would have been different. His testimony reads as follows:

"Q - When you examined Lorenza Lopez on 4 October 1978 and found that she was between 7 and 8 months pregnant, you assumed that there was only one fetus inside of the womb, is it not?

A - Yes, sir, I assumed there was only one fetus.

Q - That is why you concluded, considering the size of the abdomen or gestation size of Lorenza Lopez, it was between 7 to 8 months?

Atty. Santos

He did not conclude but he presumed.

Court

Reform the question.

Fiscal Pangilinan

Q - If a woman, like the case of Lorenza Lopez, when you examined her on 4 October 1978 with that size of the womb or stomach of Lorenza Lopez, if only you knew already that the fetus inside her womb were twins, would your assumption that she was between 7 and 8 months pregnant still be true?

A - Well, if I knew really, but then it is really very hard to determine in that period the presence of double pregnancy. I think there is fifty percent error in determining the presence of double pregnancy in woman pregnant for the first time.

Court

The question of the Fiscal is - supposing there are twins inside as in fact there were, would your findings be the

same, that the fetus of the woman is 7 to 8 months pregnant? This is hypothetical.

A - The findings will no longer be the same, sir.

Q - Why?

A - Because there will be relative increase in the height of the fetus by affection.

Q - If there are two?

A - Yes, sir.

Q - In what way?

A - The presence of double pregnancy, it is but natural that there will be relative increase in the size of the uterus because of the presence of two babies there or the height of the fundus."^[17]

The Solicitor General recommends that each accused be found guilty of five (5) distinct and separate crimes of rape, because each accused is responsible, not only for the act of rape committed personally or individually by him, but also for the act of rape committed by the others, all five (5) accused having conspired, confederated together and mutually helped one another. It would appear, however, that there is no conclusive evidence that the accused-appellants Danilo Carpio and Efren Salangsang had sexual intercourse with the complainant, since the complainant said that she lost consciousness after the second man (Arnel Mandap) - the first being Mario Nunag - had sexually abused her and she regained consciousness while Diosdado Manalili was abusing her sexually, and that she merely assumed that Danilo Carpio and Efren Salangsang had also sexually abused her. Her testimony reads as follows:

"Q - You better remember your answer to the Court. After you were abused by the second accused Arnel Mandap, you said you lost consciousness and you regained consciousness when the fifth accused Diosdado Manalili was sexually abusing you. Does the Court understand that when Efren Salangsang and Danilo Carpio were sexually abusing you, you did not yet regain your consciousness?

A - Yes. Your Honor.

"Court

Q - In other words, you are not in a position to state whether accused Efren Salangsang and Danilo Carpio abused you because you stated you lost consciousness at that time. You even do not know who succeeded Arnel Mandap?

A - Because during all the time that they were having sexual intercourse with me, they were holding my feet and that two of them were holding my hands. I lost my consciousness after Arnel Mandap had sexual intercourse with me and I know that Efren Salangsang and Danilo Carpio had also sexual intercourse with me, sir.

Q - How did you come to know that when you lost consciousness? Be sincere now with the Court. How did you come to know that Danilo Carpio and Efren Salangsang abused you when you said you lost consciousness?

A - They had also sexual intercourse with me because they were in the company of the three (3) accused, your Honor.

Q - So your declaration before the Court that Danilo Carpio and Efren Salangsang abused you also was only your presumption because they were in the company of the three (3) accused?

A - Yes, your Honor."^[18]

Consequently, each of the five (5) accused-appellants must be found guilty of three (3) distinct and separate crimes of rape, the first three, namely, Mario Nunag, Arnel Mandap and Diosdado Manalili, by direct act and participation and the other two, namely, Danilo Carpio and Efren Salangsang, by indispensable cooperation.

Accused-appellants Mario Nunag, Arnel Mandap and Efren Salangsang are each sentenced to suffer three (3) penalties of reclusion perpetua, while accused-appellants Diosdado Manalili and Danilo Carpio, both being above sixteen (16) years and below eighteen (18) years at the time of the commission of the offenses, are each sentenced to suffer three (3) indeterminate penalties of ten (10) years of prision mayor, as minimum, and seventeen (17) years and four (4) months of reclusion temporal, as maximum.

WHEREFORE, except for the modification above indicated, the judgment appealed from is **AFFIRMED** in all other respects, with costs against the appellants.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Regalado, JJ., concur.
Sarmiento, J., on leave.

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- [1] Tsn of Jan. 17, 1979, pp. 15-19; tsn of Feb. 5, 1979, pp. 13-15
[2] Tsn of January 17, 1979, pp. 20-38, tsn of February 26, 1979, pp. 34-36
[3] Id., pp. 38-41
[4] Id., pp. 42-46
[5] Id., pp. 47-48
[6] Id., pp. 48-52; also Exhs. A and A-1
[7] Tsn of June 6, 1979, pp. 12-20
[8] Tsn of June 11, 1979, pp. 18-19
[9] Tsn of June 13, 1978, pp. 7-12
[10] Tsn of July 3, 1979, pp. 17-21
[11] Tsn of Sept. 20, 1979, pp. 34-44
[12] Original Record, pp. 141-142
[13] Exhibit 4
[14] People vs. Lopez, G.R. No. L-47299, Feb. 19, 1986, 141 SCRA 385, 390
[15] People vs. Daing, G. R. No. L-40574, Nov. 29, 1984, 133 SCRA 448, 459
[16] Tsn of March 14, 1979, pp. 17-18
[17] Tsn of August 1, 1979, pp. 38-40
[18] Tsn of Feb. 26, 1979, pp. 34-36

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