

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMETERIO DINOLA, ACCUSED-APPELLANT.

G.R. NO. 54567. March 22, 1990

Ponente: CORTES, J.

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CORTES, J.:

Upon complaint by Marilyn Caldosa, the appellant-accused Emeterio Dinola was charged before the Circuit Criminal Court, 13th Judicial District, Palo, Leyte with the crime of robbery with rape under the following information:

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That on or about the 21st day of October, 1977 in the Municipality of Alangalang, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly weapon, and by means of force and intimidation, did then and there wilfully and feloniously have a carnal knowledge with one Marilyn Caldosa, and that on the occasion thereof, the said accused, by the use of force upon the same Marilyn Caldosa, and with intent to gain, did then and there wilfully and feloniously take and carry away the wrist watch of Marilyn Caldosa, to her damage and prejudice in the amount of P300.00, the money value of the watch.

Contrary to law. [Rollo, p. 8.]

Upon arraignment, the accused pleaded "not guilty" [Rollo, p. 10.] After trial, the court a quo rendered judgment finding the accused guilty beyond reasonable doubt of the crime of robbery with rape and accordingly sentenced him to suffer the penalty of reclusion perpetua, to indemnify the victim in the amount of twelve thousand pesos (P12,000.00) and to pay the costs [Rollo, pp. 11-12.]

From the judgment of conviction, the accused filed the present appeal assigning the following as errors:

1. THE TRIAL COURT ERRED IN NOT CONSIDERING THE IMPROBABILITIES IN THE TESTIMONY OF COMPLAINANT MARILYN CALDOSA.
2. THE TRIAL COURT ERRED IN PLACING THE BURDEN UPON THE ACCUSED-APPELLANT TO PROVE HIS INNOCENCE AND IN NOT ANALYZING THE STATE'S EVIDENCE TO ARRIVE AT A CONCLUSION BEYOND REASONABLE DOUBT. [Rollo, p. 65.]

The evidence for the prosecution consisted primarily of a medico-legal certificate and the testimonies of complainant Marilyn Caldosa and Dr. Sherlito Siao, the doctor who conducted the physical examination on Caldosa after the incident allegedly occurred.

The medico-legal certificate of the complainant stated the following findings:

Findings:

No external sign of physical injuries

INTERNAL EXAM:

Introitus:

Admits 2 examining fingers with slight pain

- There is an incomplete laceration of the hymen at 6 o'clock position

- There is a contusion 0.5 cm. at the 1 o'clock position of the hymen

Cervix: Negative Sperm Exam: Negative for spermatozoa

Uterus: Not Enlarged

Discharges: None

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[Exh. "A"; Rollo, p. 5.]

Dr. Sherlito Siao, a resident physician of the Daniel T. Romualdez Memorial Hospital testified to the following:

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. . . [T]hat on October 21, 1977, at about 4:00 o'clock in the afternoon, he conducted a physical examination of Marilyn Caldosa in connection with an alleged rape case; that his findings were reduced to writing Exhibit "A" which witness identified; that there were no signs of external physical injuries; that there was incomplete laceration [of the hymen] which did not extend to the base and it is possible that there was sexual contact; that there was injury to the hymen caused by a blunt instrument, perhaps a male organ, and could have been caused by forcible insertion; that no spermatozoa was found as there was perhaps no ejaculation, recent washing or there was no penetration of the male organ, and that the victim was possibly raped.

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[Trial Court Decision, p. 2; Rollo, p. 23.]

The testimony of complainant Marilyn Caldosa was summarized by the trial court as follows:

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. . . That she knows the accused . . . and that she has known him for more than a year as the accused resides in front of their house and had previously worked for them and they would oftentimes converse as they are friends; that on October 21, 1977, at about 3:00 o'clock in the morning, she was at home sleeping [alone] in the house of her aunt, Gertrudes Vda. de Barraza, who was then in Tacloban . . .; that she was awakened by a voice saying: "Do not make a noise or I will kill you. If you will not accede to a carnal knowledge I will count from one to three and I will kill you."; that she noticed a small bolo pointed towards her breast and she [was] frightened . . .; that the person then placed himself on top of her and placed his penis inside her vagina by push and pull; that the first push was not successful and the person tried many times to put his penis inside [her] vagina until he was able to do so and [she] felt pain; that while the person was on top of her, she did not resist as he was (sic) big while she is small and she cannot overcome him; that after having carnal knowledge [with] her, the person lighted a candle and when he saw her "Citizen" watch valued at P300.00 he grabbed it from her; that after the candle was lighted, she saw that the person was "Eme" whose full name is Emeterio Dinola . . .; that the accused left after grabbing her watch while she stayed in bed as she was afraid and at about 4:00 o'clock in the morning she went to the bathroom and washed her vagina as she felt dirty; that at about 5:00 or 6:00 o'clock in the morning, she went to the house of the son of her aunt in Barrio Binongtuan and they went to the Provincial Hospital in Tacloban City to have her painful vagina treated, arriving there at about 8:00 o'clock in the morning; that she was not treated that morning as the doctor on duty was not there and they were

requested to return in the afternoon; that they were given a prescription for the medicine which the son of her aunt bought while she went to school; that she went back to the hospital in the afternoon and she was physically examined by Dr. Sherlito Siao.

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[Trial Court Decision, pp. 2-4; Rollo, pp. 23-25.]

The accused denied the complainant's allegations and offered the following counter-statement of facts:

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. . . That on October 21, 1977, at about 3:00 o'clock in the morning, he was at home in their farm at Barrio Caiguihan, Alangalang, Leyte, about 1 kilometer from the Poblacion of Alangalang; that the house belongs to his father Inocentes Dinola and living with them were his step-mother and a half-brother; that he does not know Marilyn Caldosa and her statement that he raped her and stole her watch is not true as he knows nothing about it; that it is not true that he lives in front (sic) of the house of the victim in the poblacion as he lives in the farm; that he does not know Gertrudes Vda. de Barraza; that he was fetched from the house of Filemon Ramos at Calle Retana, Alangalang, Leyte on October 21, 1977 by Patrolman Augusto Salvatierra who told him that the Chief of Police wanted to see him; that he went with Patrolman Salvatierra to the Municipal Building but the Station Commander was not there; that it was only "Cocoy" Caples who was there and who immediately maltreated him; that he was never informed why he was summoned; that he was boxed, kicked, and maltreated in many other ways by "Cocoy" Caples, including being thrust at or jabbed with a pistol; that "Cocoy" Caples boxed his ears with his (Caples) palms and blood came out and he lost consciousness; that he was maltreated in the office of the Chief of Police; that while he was in the Municipal Building on October 21, 1977, he did not meet Marilyn Caldosa and he did not see her the next day; that on October 22, 1977 he was inside the jail and during the whole time that he was in jail in Alangalang he never saw Marilyn Caldosa; that the charge against him is a mere fabrication.

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[Trial Court Decision, pp. 7-8; Rollo, pp. 28-29.]

The testimony of the accused was corroborated by the only other defense witness Diosdado Dinola, the accused's half-brother.

As in most rape cases where the complainant is the main prosecution witness, the issue boils down to her credibility.

The accused assails the credibility of complainant Marilyn Caldosa by pointing to the following factors which, according to the accused, negate the complainant's allegation of the use of force on her: (1) there were no external signs of injuries on her body; (2) the complainant did not make any resistance as in fact her hands were just on her sides during the time the forced intercourse allegedly occurred; and (3) she did not say anything to stop her assailant from consummating the act.

In the medico-legal certificate prepared by Dr. Sherlito T. Siao, it was stated that Marilyn Caldosa sustained "[n]o external sign of physical injuries" [Exh. "A"; Rollo, p. 5.] This statement was confirmed by the doctor when he took the witness stand [TSN, August 1, 1978, p. 3.] But from this medical finding alone, it can not be concluded that there is no truth in the complainant's allegation of rape. The Court has already ruled that the absence of external signs of physical injuries on the complainant does not necessarily negate the commission of the crime of rape [People v. Malabed, G.R. No. 63219, November 28, 1984, 133 SCRA 392; People v. Monteverde, G.R. No. 60962, July 11, 1986, 142 SCRA 668; People v. Mendoza, G.R. No. 74653, July 26, 1988, 163 SCRA 568.]

But the accused, in order to impugn further the credibility of the complainant, relies on the latter's admission that during the time the accused was on top of her, her hands were on her sides and that she did not say anything to stop the accused.

It is true that when asked if the complainant resisted the accused while he was on top of her, she said that she did not [TSN, August, 1, 1978, p. 10.] She also admitted that during all the time that the accused was on top of her, her hands were just on her sides [TSN, September 20, 1978, p. 19.] However, it must be remembered that according to the complainant, when she was roused from sleep by the accused, the latter held a bolo to her chest and threatened to kill her if she made any noise [TSN, August 31, 1978, p. 9.] Moreover, when asked to explain why she offered no resistance, she consistently stated both on direct and cross-examination the following: "I cannot resist him because he is bigger and I am small" [TSN, August 1, 1978, p. 10; "I did not anymore [resist] because he was (sic) big and I was (sic) small" [TSN, September 20, 1978, p. 19.]

The Court has already ruled that rape may be committed even if no force was used, intimidation being sufficient. Intimidation includes the moral kind such as fear caused by threatening the girl with a knife [People v. Garcines, G.R. No. L-32321, June 28, 1974, 57 SCRA 653.] The Court has likewise held that the admission of the victim that her hands were on her sides while the accused was on top of her does not mean that she consented to the act [People v. Modelo, G.R. No. L-29144, October 30, 1970, 35 SCRA 639.] The complainant in this case, is a seventeen (17) year old lass while the accused is a thirty four (34) year old laborer. In complainant's words: "he is bigger and I am small." Considering, the size, age and strength of the accused, coupled by his use of a bolo to threaten the complainant, the Court rules that the complainant's failure to resist the accused does not detract from the fact that the latter employed intimidation in order to have sexual intercourse with the latter. The law does not impose a burden on the rape victim to prove resistance. What needs only to be proved by the prosecution is the use of force or intimidation by the accused in having sexual intercourse with the victim.

The accused next takes issue with the statement of the complainant that after he allegedly raped her, he lighted a candle, enabling the complainant to see his face and recognize him. The accused finds it incredible for a perpetrator of a crime to give the victim the chance to identify him. Thus, it is concluded by the accused that the complainant has fabricated a tall tale of rape involving the two of them.

But in this day and age, it is not uncommon for criminals to be careless about or to even intentionally reveal their identities to their victims. The failure by a criminal to conceal his identity would not make the commission of the crime any less credible. Bragadoccio among criminals is not uncommon. Very often too, they are secure in the thought that they have instilled sufficient fear in their victims that the latter will not give them away to the authorities.

The complainant in this case was able to identify her assailant with certainty. When asked on the witness stand who had assaulted her, she replied that it was the accused, Emeterio Dinola [TSN, August 31, 1978, p. 7.] On being told to identify her rapist and with the permission of the trial court, she stepped down from the witness stand and tapped the accused on the shoulder [Id.] The trial court found the complainant to be a credible witness, and with good reason. A careful reading of the record of the case shows the complainant's testimony regarding the circumstances of the rape and the identity of the rapist to be direct, lucid, forthright and, being totally untainted by contradictions in any of the material points, deserves credence.

Lending further credence to the testimony of the complainant is the oft-repeated observation of the Court that no young Filipina of decent repute would publicly admit that she had been criminally abused and ravished unless that is the truth. It is her natural instinct to protect her honor [People v. Itano, 109 Phil. 912 (1960); People v. Reyes, G.R. No. 62387, June 19, 1985, 137 SCRA 99; People v. Ramilo, G.R. No. 52230, December 15, 1986, 146

SCRA 258; *People v. Magdaraog*, G.R. No. L-40988, April 15, 1988, 160 SCRA 153.] As the trial Court noted:

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. . . [A]t the time of the incident the complaining witness was only 17 years old, single, and a college student. She was then at the stage of life when an individual prepares for the future. This Court cannot conceive that such a person would seemingly jeopardize her future by the filing of the instant case with its resultant adverse social effects unless the charges were true. She would not willingly go through the rigors of a public trial wherein she would have to relate, in detail, the atrocity committed upon her person unless she was sure that it was the accused who committed such an atrocity.

Further, aside from the allegation that the instant case is a mere fabrication, no evidence has been adduced by the defense as to why the complaining witness would fabricate a case against the accused. [Trial Court Decision, p. 11; Rollo, p. 32.]

Finally, the Court finds significance in the fact that the complainant sought medical examination immediately after the incident [TSN, August 31, 1978, p. 12.] This fact, taken together with the other circumstances of the case, indicates that the fresh laceration found by the doctor on her hymen [Exh. "A"; Rollo, p. 5] was inflicted against her will.

In fine, the Court, after a thorough examination of the entire record of the case, finds no substantial reason to depart from the established rule that the Supreme Court regards with respect and will generally not disturb the findings of the trial court on the credibility of witnesses, unless certain facts of substance and value have been overlooked which if considered, might affect the result of the case [*People v. Sinaon*, G.R. No. L-15631, May 27, 1966, 17 SCRA 260; *People v. Abonada*, G.R. No. 50041, January 27, 1989; *People v. Pedrosa*, G.R. No. 56457, January 27, 1989.]

Having sustained the findings of the trial court on the credibility of the complainant, the defense put up by the accused, alibi, must necessarily fall. The Court has consistently held that the alibi of the accused that he was not at the rape scene cannot stand against the positive identification made by the complainant [*People v. Soriano*, G.R. No. L-32244, June 24, 1983, 122 SCRA 740; *People v. Deus*, G.R. No. 63729, May 31, 1985, 136 SCRA 660; *People v. Aragona*, G.R. No. L-43752, September 19, 1985, 138 SCRA 569.] Alibi is inherently a weak defense [*People v. Datahan*, G.R. Nos. 77107-08, January 21, 1988, 157 SCRA 215] especially, where as in this case, the same was corroborated only by a relative of the accused [*People v. Manuel*, G.R. No. L-44461, April 15, 1988, 160 SCRA 248; *People v. Macabenta*, G.R. No. 72476, February 14, 1989.]

The accused, in this case, was not satisfied in abusing the complainant. After satisfying his criminal lust and upon seeing the watch on the girl's wrist, he again threatened to kill the complainant if she did not hand over the watch. The complainant refused to give it but he forcibly grabbed it from her [Sworn Statement of Marilyn Caldosa dated October 22, 1977, p. 1; Rollo, p. 3.] The accused was charged and convicted of the special complex crime of robbery with rape.

However, it does not appear from the record of the case that when the accused entered the house of the complainant, he already had the intention to rob the complainant. In fact, the complainant testified that after she was raped by the accused, the latter lit a candle, saw the watch on her wrist, threatened to kill her if she did not give it to him and forcibly took it from her [TSN, August 31, 1977, pp. 10-11.] Hence, the taking of the watch by the accused was more of an afterthought, even accidental. If the intention of the accused was to commit robbery but rape was also committed even before the robbery, the crime of robbery with rape is committed [See *People v. Canastre*, 82 Phil. 480 (1948).] However, if the original design was to commit rape but the accused after committing rape also committed robbery because the opportunity presented itself, the criminal acts should be

viewed as two distinct offenses.

ACCORDINGLY, the Court hereby MODIFIES the judgment of the court a quo by finding the accused guilty of two independent crimes of rape and robbery. The accused is hereby sentenced to suffer the indeterminate penalty of not less than two (2) years, four (4) months and one (1) day of prision correccional, to not more than eight (8) years of prision mayor [Art. 294, par. 5, RPC in relation to Act No. 4103, as amended] for the crime of robbery and to restore to the victim the watch which was taken or to pay its value in the amount of three hundred pesos (P300.00). As for the crime of rape, since it was committed with the use of a deadly weapon, the accused must suffer the penalty of reclusion perpetua (Art. 335, Revised Penal Code in relation to Art. III, Sec. 9 (1) of the 1987 Constitution] and indemnify the victim the amount of thirty thousand pesos (P30,000.00) (People v. Viray, G.R. No. L-41085, August 8, 1988, 164 SCRA 135.)

With costs against the accused.

SO ORDERED.

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

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