

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE TEJADA, ACCUSED-APPELLANT.

G.R. No. 55028. August 31, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Charged with and convicted for the crime of rape in the Court of First Instance of Isabela, Jose Tejada was sentenced to life imprisonment, with all the accessory penalties provided by law, to pay and indemnify the offended party, Florenda Talvo y Cafirna, in the amount of P12,000.00, as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

From the judgment of conviction, Jose Tejada inter-posed the present appeal.

The facts as proved by the prosecution's evidence, and quoting from the People's brief are as follows:

"Appellant JOSE TEJADA and the TALVO family were neighbors in Sitio Cawacan, Capirpirwan, Cordon, Isabela. Also, appellant is related to them, his mother being the aunt of CANDIDO TALVO, complainant FLORENDIA's father.

"In the afternoon of October 25, 1971, appellant went to the house of the TALVO's to invite their seventeen year old daughter, FLORENDIA, then single (now married), to attend the wedding of his sister in Sta. Ana, Echague, Isabela, on October 27, 1975. FLORENDIA told him to first secure the permission of her parents. He did and FLORENDIA's mother LEONARDA TALVO, allowed her to go with appellant to Sta. Ana for the wedding. LEONARDA would have gone with them but she had a visitor from Manila who just arrived that morning. (Tsn, pp. 20, 23-26, December 8, 1976).

"So at about 7:00 o'clock in the morning of October 26, 1975 appellant and FLORENDIA left Cordon for Echague, arriving in Barrio Sta. Ana at about 2:00 o'clock in the afternoon of the same date. They proceeded to the house of appellant's mother, where preparations were going on for the wedding to be held the following day. FLORENDIA helped in the preparations. That night, she slept with AURORA TEJADA (niece of appellant) in a small room of the house which was used as a canteen. She wore pants with a garter around the waist and had a blouse with buttons in front. (Tsn, pp. 27-29, December 8, 1976).

"At around 4:00 o'clock in the early morning of October 27, 1975, FLORENDIA was awakened by a hold on her left shoulder. She recognized the intruder as appellant. He was armed with a sharp-pointed instrument which he pointed at her and warned her not to shout, otherwise, she would be killed. FLORENDIA became frightened and did not shout. Appellant then forced her to lie flat on her back and placed himself on top of her. Using his feet, he kicked loose her pants and panty which were both secured by garter at the waist. Appellant seized both her hands and pinned them down with his hands, forced her legs apart and started to perform a 'push-and-pull' motion after inserting his penis inside her vagina. Appellant kept kissing her lips and cheeks in the process. All the while FLORENDIA struggled to free herself. She felt pain and later felt a warm fluid discharge in her private parts. Afterwards, appellant stood up and left. FLORENDIA arose and put on her panty and pants. (Tsn, pp. 29-37, December 8, 1976).

"In the afternoon of the same day (October 27, 1975), FLORENDIA reported the incident to ROMEO TEJADA, brother of appellant. The latter cursed his brother in the Ilocano dialect, saying 'Tarantado ti ukimnanatta' (that fellow is reckless, that vulva of his mother). (Tsn, pp. 37-38, December 8, 1976).

"The wedding took place later that after-noon in the house of appellant's mother, follow-ed by a dance which lasted until the next mor-ning. FLORENDIA felt depressed and did not dance. Neither was she able to sleep that night. She left for Cordon early in the morning of October 28, 1975 with ROMEO TEJADA and his wife, LYDIA TEJADA. From Cordon, she went home alone to Cawacan. (Tsn, pp. 38-41, December 8, 1976.)

"The following Monday, November 3, 1975, FLORENDIA visited her sister, EUFEMIA TALVO at the latter's house some forty meters away from her house. Sensing that something was wrong EUFEMIA asked FLORENDIA what was the matter. It was then that FLORENDIA related to her what appel-lant did to her in Sta. Ana in the early morn-ing of October 27, 1975. EUFEMIA asked her if she had reported the matter to their parents. Replying in the negative, FLORENDIA explained that she was afraid to do so. Whereupon, EUFEMIA recounted the incident to them. Im-mediatly upon hearing the same, their father, CANDIDO TALVO, called for FLORENDIA and inquired from her if the report was true. FLORENDIA con-firmed the truth of the report. CANDIDO then asked FLORENDIA if she wanted to bring the matter to the authorities. Getting an affirmative answer, CANDIDO brought his daughter to the office of the Integrated National Office of Cordon, Isabela, but he was advised to first bring FLORENDIA to a physician for medical examination and to file their complaint with the Echague Police since the crime was committed within its jurisdiction. (Tsn, pp. 41-43, December 8, 1976; pp. 6-9, December 1, 1977).

"The following day, November 4, 1975, FLOREN-DA and her mother went to see Dra. INECITA JAVO-NILLO. The latter conducted an internal examina-tion of FLORENDIA's sexual organ and set forth her findings in a medical examination (Exh. 'A'). (Tsn, pp. 2-6, December 8, 1976). Her findings are as follows:

'Finding on internal examination are:

'Non-parous vagina. Vagina admits two fingers snugly. There are two lacerations at the hymenal opening, 1 at 4:00 o'clock and 1 at 8:00 o'clock position.

'The internal genitals are otherwise, normal in size and structure.'

"Thereafter, they proceeded to file their com-plaint in the office of the Integrated National Po-lice of Echague, Isabela, where FLORENDIA gave her sworn written statement (Exhibit C), and filed her complaint (Exhibit B). Her parents, CANDIDO and EUFEMIA TALVO, also executed sworn statements (Exhibits E and F, respectively). (Tsn, pp. 43-46, December 8, 1976; pp. 10-11, December 1, 1977)."[1]

Once more, the issue presented is, as in most criminal cases, and specially in a prosecution for rape, one of credibility of the victim who invariably is alone to offer testimony of her traumatic experience, as against her ravisher or ravishers who would offer their own testimony in an attempt at exculpation.[2]

The trial judge's assessment of the relative credibi-lity of the opposing witnesses admittedly is of great weight.[3] In this case, the trial judge has put on record that he was impressed with the candor and sincerity of the victim, Florendia, while testifying on how she was sexually violated by the appellant. True enough, a perusal of the transcript of her testimony quoted at length in the deci-sion will confirm the trial judge's evaluation of the victim's credibility and his finding of the sufficiency of her testimony to support his verdict of guilt.

The victim's narration of the facts on how she was ravished is perfectly natural. There is nothing in it that would cast doubt as to its veracity. To begin with, there is absolutely no reason to doubt that Florendia was sexually assaulted. The medical finding attests to this fact. Her assertion of force and intimidation having been employed on her by the appellant is positive and convin-cing. It would, indeed, be difficult to entertain belief that the sexual

act was performed with her consent. Appellant is a married man, he could not have been acceptable much less desirable to Florenda as a bed mate. No amorous relation was intimated as having existed between her and appellant. If there was, a more appropriate tryst would be easy to have, instead of the congested and not so secret a place as where the act complained of was performed. If complainant, therefore, pointed to appellant as her ravisher, that must be the plain truth.

To impugn Florenda's credibility, appellant claims he could not have uttered the threatening words: "If you shout I will kill you", with so many persons closely around. These words could have been uttered only in whisper and still be as effective in instilling fear, what with the words being accompanied with the pointing of a sharp-bladed weapon at her. Complainant was alone, too, in the small room, her sleeping companion, Aurora Tejada, appellant's niece, having left the room earlier. The fear-instilling effect of the weapon did not pass just because appellant's hands no longer held it when he used his two hands to pin her down and force her to part her legs. Florenda was aware the weapon was just around for instant use if needed.

Appellant also makes the preposterous claim that there was no sufficient showing that force was employed. Florenda testified that she was pinned down by appellant with his two hands, which he had to use both with all his strength, for she struggled hard to foil appellant's evil intent. So much so that with both hands needed to put down her resistance, it was with his feet that he lowered the girl's pants and panties both with garter around the waistline.

There, likewise, is nothing incredible about the feet of appellant being used and succeeding in lowering the girl's pants and panties. The garter that holds them up around the girl's waist could have been so loosened up that appellant did not have to use his hand to lower the pants down. If needed, he certainly would have used his hands to accomplish his beastly purpose with which he was already unshakably seized.

In any case, for force to be attendant as to make the sexual act the crime of rape, it need not be irresistible. As held in the case of *People vs. Savellano*[4] it is enough that the force used is such as would make possible the consummation of the desire for an intercourse, considering the age of the parties, their size, strength and relation to each other. In this case, appellant is a farm hand, still in his prime, whose kind of labor made him physically able to easily overcome the resistance of a young girl against his forcible ravishment of her. With a deadly weapon to back his threat, physical force need not be as great as when the threat is made with bare hands.

It is also claimed that with many guests in the house, the commission of rape as portrayed by the victim is highly incredible. It might have been so if appellant did not force the girl into the sexual act with a sharp-bladed weapon pointed at her with a death-threat to silence her. Moreover, at the time of his intrusion, it was at 4:00 o'clock in the morning when the guests must be in their deepest slumber, which appellant must have made sure it was so, before he entered the room to commit a devilish deed.

Neither would the tardiness in the reporting of the incident to the police - ten days after its occurrence - detract from the veracity of Florenda's story. She was afraid to reveal to her parents what happened to her, obviously because of appellant's threats. She could, however, not but betray her harrowing experience by her mood and her looks as her sister Eufemia so noticed from her, that when asked what was wrong, Florenda got to relating to her sister what that experience was. This led to the matter being brought immediately thereafter to the knowledge of the parents who lost no time in reporting the incident to the police authorities and had Florenda submit to a physical examination. Thus explained, the delay in filing the complaint does not in any way affect the credibility of the complainant. This is specially so as she did inform appellant's brother, Romeo Tejada, on the very same day she was deflowered, how appellant ravished her, Romeo then cursing his brother for the latter's misdeed.

Significantly, this brother of appellant was not presented to deny complainant's testimony of having informed him

of her sad experience with appellant. This is a clear case of suppression of evidence that gives rise to the presumption that if he had been presented, the brother would have confirmed complainant's testimony.[5] This circumstance gives strong support to complainant's accusing appellant of having had forcible carnal knowledge of her on the day of record.

There can, indeed, be no conceivable motive for complainant to impute falsely to appellant the commission of a crime that can ruin her honor and reputation and ex-pose her to shameful embarrassment of a public trial of the offense charged. Such an act, if complainant had done so, is utterly not in keeping with the traditional modesty of which our Filipino women is well-known. It can only be explained by the truth and reality of her testimony that impels her, despite all the unpleasant and unwanted consequences, to seek redress for a heart-gnawing grievance that will probably linger the rest of her life.

Strangely, appellant has not come up with a definite categorical defense. He merely claims to know nothing about the crime. By his attempt to impugn the complainant's credibility, he would seem to suggest either that complainant's story is but a concoction, or that there was voluntariness and consent in the sexual intercourse. With what the trial court said as to the complete credibility of complainant's testimony which We find, as heretofore discussed, fully supported by the evidence, appellant's attempt to assail the veracity of the testimony against him cannot but be futile. His own witnesses were shown, by the trial court's very accurate evaluation, to be undeserving of credit, as in the case of his sister, Aurora Tejada, as to whose testimony the trial court aptly observed:

"Finally, there is to be reckoned with the testimony of Aurora Tejada. At first blush, her declaration, especially on her insistence that she did not leave the room that night of October 26, 1975, appears to be material and relevant as it tends to contravene the claim of the offended party that she (Aurora) was no longer with her when the accused sexually molested her. But she, Aurora is admittedly the niece of the accused. If three persons - perhaps friends - of Jose Tejada can afford to testify for him to the extent of disregarding the truth and violating their solemn oaths, with much more reason for a relative like her, a niece, who is desirous to shield her uncle (U.S. vs. Carlos, 21 Phil. 553). Consequently, her testimony should be rejected as springing from her relation to the accused (People vs. Valera - L-20286, October 28, 1965, 15 SCRA 164). Her actuation in trifling with the truth is best shown when she declared that her uncle (herein accused) arrived in Sta. Ana for the wedding with the complainant, Jose Gorteo and Eulogio Gragrasin as his companions (p. 3, t.s.n. - Trial of January 23, 1979). This is plainly false because her uncle maintained, which also is the stand of the prosecution, that he came in with Florenda Talvo only. Aurora is found to have committed so many more lies that there is no more need to mention them here. Hence, the Court finds her testimony not fitting of even a scant consideration." [6]

On similar grounds, the trial court also discounted as simply averse to the truth the testimony of the other witnesses presented by the appellant, all in a weak and futile attempt to discredit complainant's natural and straight-forward testimony which, as already adverted to earlier, is characterized with candor and sincerity.

WHEREFORE, the guilt of appellant has been proved beyond reasonable doubt as found by the court a quo, and as recommended by the Solicitor General, the judgment appealed from is hereby affirmed in toto, with costs against appellant.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and Guerrero, JJ., concur.
Abad Santos, J., on leave.

[1] pp. 2-6, Appellee's Brief, p. 72, Rollo.

[2] *People vs. Santos*, 94 SCRA 277; *People vs. Lacuna*, 87 SCRA 364; *People vs. Ilagan*, 64 SCRA 170; *People vs. Barbo*, 56 SCRA 459; *People vs. Molina*, 53 SCRA 495.

[3] *People vs. Mercado*, 97 SCRA 232; *People vs. Ramos*, 96 SCRA 903; *People vs. Advincula*, 96 SCRA 875; *People vs. Santos*, 94 SCRA 277; *People vs. Conchada*, 88 SCRA 683.

[4] 57 SCRA 320.

[5] *Orfanel vs. People*, 30 SCRA 819; *People vs. Ricarte*, 78 Phil. 112; *People vs. Balansag*, 60 Phil. 266; *U.S. vs. Sarikala*, 37 Phil. 486.

[6] pp. 16-17, Appellee's Brief, p. 72, Rollo.

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