

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO TAMAYAO ALIAS PETER, DEFENDANT-APPELLANT.

G.R. No. 56699. January 28, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Appeal from the decision of the Court of First Instance of Cagayan, convicting the accused, Pedro Tamayao alias Peter, of the crime of rape, and sentencing him to reclusion perpetua, all the accessories of the law, and to indemnify the offended party, Victoria J. Molina, of the amount of P12,000.00 and to pay the cost.[1]

As stated in the People's Brief, the incident occurred in Nagbannagan, Lasam, Cagayan, and the facts thereof are narrated in the same brief as follows:

"At the time of the incident, the victim, Victoria Molina, was a market vendor who sold baskets and winnowers. She was married to Alberto Molina, a tree marker of the Bureau of Forest Development. They resided at Pussian, Alcala, Cagayan.

"Appellant Pedro Tamayao alias Peter, is married to the victim's sister, Carmen Tamayao. Appellant and his wife were likewise market vendors. They resided at Tuguegarao, Cagayan. Prior to and up to the day of the incident, Victoria Molina traveled with spouses Pedro Tamayao and Carmen Tamayao in selling wares at different public markets.

"In the afternoon of May 8, 1974, Victoria Molina, together with appellant and his wife, arrived at the public market of Nagbannagan and there occupied a stall which they would use the following day, May 9, 1974, Nagbannagan's market day.

"In the evening of May 8, 1974, Alberto Molina, the victim's husband together with six (6) employees of the Bureau of Forest Development, went to the public market of Nagbannagan where he had his supper. He left Nagbannagan that evening with his companions.

"Victoria Molina then retired for the night. Appellant and his wife slept on a separate bed in the same stall.

"At about 2:00 a.m. on May 9, 1974, Victoria Molina left the stall to urinate. Along the way, she noticed appellant following her. He held a pair of scissors. Suddenly, he said to her: "You try to shout now and I am going to kill you". She wanted to cry out but he aimed the scissors to her breast. She then asked him: "What are you going to do with me?" But he only said: "Try to shout now and I will kill you".

"At that, he held her arm and despite her resistance, pulled her to a place some distance off their stall. There, still holding the scissors, he forced her to lie down and pulled down her panty. She fought him and put her panty back in place. He, however, used the scissors to wound her at her leg, and pulled down her panty again. Her panty was torn as she resisted him. Eventually, he was able to subdue her and have sexual intercourse with her.

"Having accomplished his purpose, appellant told Victoria that he would kill her should she divulge the incident. Thus threatened, she returned to her place inside the stall they occupied.

"Victoria Molina sold her wares as usual in the morning of May 9, 1974. However, she left the market place and had herself physically examined by Dr. Alejandro Acob, Rural Health Physician of Lasam, Cagayan, at about 11:00 o'clock of the same morning.

"Dr. Acob at that time issued to her a handwritten Medical certificate dated May 9, 1974 (Exhibit A-1; Rec., Volume I, p. 271), which stated the following findings:

'Stabbed wound right side flexor of the knee 1 cm. width 1 inch depth

Cut wound 2 inches wide, 1 cm. depth right side flexor of the knee

Scratch wound right arm

Scratch wound of the inner thigh

Scratch wound left lower side of the abdomen.

Presence of semen inside the vaginal cavity.'

"After having herself physically examined, Victoria Molina returned to the market place and resumed selling her wares. In the afternoon of that day, May 9, 1974, she went with appellant and his wife to Gattaran, Cagayan, where they transferred to his weapons carrier. They proceeded to Paret, Alcala, Cagayan, where Victoria separated from them and went on to her residence at Pussian, Alcala, Cagayan. Appellant and his wife headed for Tuguegarao, Cagayan, where they lived.

"The following day, May 10, 1979, Victoria Molina went to Paret, Alcala, Cagayan, with her sick child. At Paret, she met her husband as pre-arranged. They proceeded to Amulung, Cagayan, where their child was treated by one Dr. Dulce Donato-Baculi.

"From Amulung, the spouses Molina went to Tuguegarao, Cagayan, where they picked up Victoria's merchandise from appellant and his wife. Then the spouses Molina returned to Paret. From Paret, Alberto Molina proceeded to Kalinga-Apayao, while Victoria went home to Pussian.

"Alberto Molina returned to Pussian about two weeks later. It was then that Victoria informed him that she had been raped by appellant.

"On May 27, 1974, the spouses reported the case to the police at Lasam, Cagayan, where the incident happened (Rec., Volume I p. 10).

"On June 3, 1974, Victoria Molina executed a sworn statement before PC Investigator, Sgt. Leandro Bodullo (Rec., Volume I, pp. 5-7). Among other things, Victoria stated in her sworn statement the following:

'11. Q— After the incident, what transpired next?

A—

No more sir, because also attempt to awake my sister CARMEN JURADO TAMAYAO to report the incident but according to my brother-in-law (i.e., appellant Pedro Tamayao) he will also kill me if I report the incident so that at about 11:00 that same morning, I decided to submit myself to the doctor for examination and physical check.

"Dr. Alejandro Acob, who physically examined Victoria Molina on May 9, 1974, testified that: (a) the stab wound on her right knee was caused by a pointed instrument, such as a knife or scissors; (b) the cut wound on her right knee was likewise caused by such an instrument; (c) the scratch wound on her right upper arm might have been caused by fingernails; (d) the scratch wound on her right inner thigh might have been caused by fingernails; and (e) the scratch wound at the left lower side of her abdomen could have been caused by fingernails (tsn., pp. 4-64, August 6, 1974; 4-18, October 7, 1974; 2-20, December 16, 1974; 3-41, August 14, 1975)."[2]

Appellant disputes the veracity of the evidence of the prosecution with his lone assignment of error that the Court a quo erred in convicting him of the crime charged. His pretense of innocence is based on the alleged improbability of the commission of the crime, and the alleged doubtful credibility of the damaging medical findings of the examining physician.

It is contended by appellant that the crime could not have been committed in the vicinity of a public market where so many people, vendors of wares and merchandise, went to the market site on the eve of the market day to prepare for their business activities the following day. They slept there during the night in their respective stalls. It was at 2:00 o'clock a.m. when the people in the market place were fast asleep that the rape took place. The complainant had gone to urinate at a place which had to be private. Appellant followed behind her, and with the use of his superior strength, and with the aid of a pair of scissors to threaten his intended victim into silence, the rape could then be, as it was, successfully accomplished with the darkness of the night also helping in facilitating the commission of a crime that takes but a short while to consummate.

The delay in the revelation by complainant of her sad experience to her husband, alleged to impair complainant credibility, is explained by the threats of death made by appellant to her just after the criminal assault, and the thought of sending a brother-in-law to jail for as long a term as life imprisonment. These are factors that naturally weighed on her with deterrent effects, overcome only by the overpowering will to vindicate an outrage committed against her honor and chastity. No other sufficient motive having been suggested why complainant would file so serious a charge involving not only her honor and reputation but that of her husband, the decision to punish her assailant for the sake of truth and justice was the only compelling force that prompted her to take the action she took.

The fact however, is that immediately after the incident, complainant took the earliest opportunity to have herself examined physically, driven to take this step by the grievous outrage she must have felt after having been sexually attacked. This was on the day after the commission of the crime, as was never seriously denied or disputed. What appellant tries to dispute is only the veracity of the findings of the examining physician whose credibility he assails because of the discrepancy found between the handwritten certificate he issued (Exh. A-1) and the typewritten copy thereof (Exh. A). The discrepancy however, was sufficiently explained, and that at any rate, the injuries as noted in the medical certificates were actually inflicted and not controverted. Appellant only tried to show how the injuries were inflicted not by him, but by his wife when the latter and complainant who are sisters, allegedly quarreled in a birthday party held in appellant's house. This attempt of appellant at exculpating himself was, however, futile in the face of the fact that the medical certificate attesting to the same injuries was issued before the alleged quarrel. And it may be worth emphasizing that the physical and medical examination conducted on complainant by Dr. Acob on the day as shown in the medical certificate following the commission of the rape, was not disputed.

Could it be that in alleging that the medical certificate issued by Dr. Acob was of doubtful veracity, appellant meant to deny that any physical examination was conducted by Dr. Acob on complainant? On this point, We decline to accord more weight on appellant's mere surmise or deduction, than the doctor's sworn affirmation that he did perform the medical examination on the day as shown in the medical certificate he issued. This, notwithstanding appellant's citing the fact that Dr. Acob has been charged with and convicted of falsification of public documents by the Court of First Instance but an appeal of the conviction being still pending in the Court of Appeals, and was administratively charged by Mrs. Atanacia E. Agatep, a Public Health Nurse of Lasam, Cagayan, which charge, however, appears not to have been investigated.[3] No evidence whatsoever was adduced to show why Dr. Acob would lend himself to committing falsification just to fabricate evidence for the complainant, which would be of decisive value in sending a man, probably innocent, to jail or to the execution

chamber. He is a public officer, the municipal doctor, and his official acts are presumed legal and regular.

We have no reason for doubt as to Dr. Acob's competence to testify as an expert witness, mainly on appellant's attempt to show the doctor's error in classifying a mere scratch as a wound, and that it has a trajectory. As clearly shown by the Solicitor General,[4] a scratch can be an open wound, citing Solis, Legal of Medicine, and it has a trajectory, a term which simply means the path described by a body moving through space.[5] Obviously, a scratch would have a trajectory.

As previously stated, the medical certificate would have a decisive value on the question of whether complainant was sexually assaulted as charged. This is so not only because of the findings of injuries having been inflicted to prove violence and the act having been resisted by and without consent of the complainant, but also because of the finding of semen inside complainant's vaginal cavity. This finding of semen is sought to be impugned by appellant with his claim that, as also admitted by Dr. Acob, when semen get mixed with the female's discharge, the semen cannot be distinguished from the female's fluid. But there was no showing that such mixture resulted or took place, which is unlikely, as the complainant, when forcibly attacked sexually, could not have reacted as to cause her to make any discharge or secretion of fluid in the vaginal region.

Likewise, as previously stated, no sufficient motive was shown why complainant should falsely charge his own brother-in-law with, of all crime, that of rape, which can undermine both her and her husband's honor and reputation, and could even be punishable by death. The only motive that appellant can think of is that of alleged jealousy of complainant's husband, and also the quarrel allegedly had between complainant and her sister, appellant's wife. Hardly any showing is needed to demonstrate how utterly inadequate would these alleged motives be, even assuming them to be true, for complainant to place her very honor and reputation in disgrace in her desire to send a man to suffer innocently the very serious penalty which a capital offense as that of rape would entail.

By and large, We are convinced that the crime charged was committed in the manner as narrated by the offended party.

WHEREFORE, the judgment appealed from being in accordance with law and the evidence, the same is hereby affirmed with costs.

SO ORDERED.

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

[1] p. 39, Decision; p. 8, Rollo.

[2] pp. 3-8, Appellee's Brief; p. 58, Rollo.

[3] p. 47, tsn., Feb. 9, 1977.

[4] pp. 14-16, Appellee's Brief, p. 58, Rollo.

[5] The New Bantam English Dictionary, Rev. Ed., 1979.

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