

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLO LACTAO, ACCUSED-APPELLANT.

G.R. No. 56768. October 29, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

On 15 April 1979, Apolonia Aramburo, then in the early bloom of her youth,[1] was allegedly detained by the accused in his 2 m. x 3 m. dwelling for about two weeks, and there raped every night while his wife, at one time, watched with amusement. This is the version of the prosecution.

Thus by reason of the evidence presented by the prosecution, which the trial court pronounced to be credible, accused PABLO LACTAO was found guilty of the crime of rape with serious illegal detention, sentenced to reclusion perpetua, and ordered to indemnify the victim in the sum of Twelve Thousand pesos (P12,000.00). He is now before us insisting on his innocence.

Apolonia testified that on 15 April 1979, at about 8:00 o'clock in the morning, she was outside the house of one Teresita Alburo Perfecto in Bitan-O, Sorsogon, Sorsogon, where she was staying. While throwing garbage, Luz Lactao, wife of accused Pablo Lactao, arrived and fetched her on the pretext that her father wanted to see her.[2] Since Luz was known to her, as Luz and Pablo were the agricultural tenants of her father,[3] she went with Luz. They boarded a tricycle and proceeded to Sts. Peter & Paul Subdivision. However, instead of bringing her to her father, she was brought to the house of the accused where she was detained in a small room for about two weeks.[4]

That evening, the accused entered the room where she was lying down, removed her panties, placed himself on top of her, and for about an hour, had sexual intercourse with her, while Luz who was then a meter and a half away watched, laughing.[5]

Thereafter, every evening, for the entire duration of her detention, she was raped by the accused.[6]

Apolonia likewise said in open court that even prior to 15 April 1979, accused had dragged her a number of times to a camarin adjacent to her house where she was repeatedly raped.[7] Her centenarian father who was living in the house was of little help since he was already half blind.[8]

Avelina Cadag, half-sister of Apolonia, then narrated that she reported the disappearance of her half-sister to the police, but the police never found her. She saw Apolonia again only on 29 April 1979 after the latter was able to escape from the accused.[9]

That same afternoon, Apolonia was examined by the Senior Resident Physician of the Sorsogon Provincial Hospital who found her hymen to have old healed lacerations which could have been caused by continuous sexual contact, strenuous exercise, accident, repeated scratching of the vagina, and even by climbing a tree or sitting or sliding on a stone.[10]

The accused on the other hand asseverated that he never raped nor had sexual intercourse with Apolonia before or after 15 April 1979. He was merely accused of raping Apolonia because he failed to leave the land of Gabriel Aramburo, father of Apolonia and Avelina. Avelina, he said, had earlier sought his ejectment as she wanted to gather the coconuts from the land he was tenanting.[11] Besides, he asserted that he could not rape anyone in front of his wife and in the presence of his five children who were there in their house.[12]

On her part, Luz swore that on or about 15 April 1979 she could hardly move as she had just delivered a baby on 7 April 1979 and was still recuperating therefrom. Thus, she could not have fetched Apolonia in the morning of that day.[13]

On 9 December 1980, the Court of First Instance of Sorsogon, Tenth Judicial District, Br. I, Sorsogon, Sorsogon,[14] while discrediting Avelina Cadag's testimony as it was "muddled with inaccuracies,"[15] nevertheless found the testimony of Apolonia to be plausible, and convicted the accused of rape with serious illegal detention. Hence, this appeal.

Accused argues that the uncorroborated testimony of private complainant is not only incredible and unbelievable but likewise saddled with inconsistencies showing the tendency of private complainant to exaggerate and prevaricate facts.

The Solicitor General however counters that the alleged inconsistencies in the testimony of Apolonia refer only to minor details which are not intended to pervert the truth and were not of sufficient significance as to denote a deliberate intent to utter a falsehood; consequently, the penalty imposed should be death considering that the accused was found guilty of the complex crime of rape with serious illegal detention.

It may be worth to mention at the outset that there is no complex crime of rape with serious illegal detention. If the purpose is to deprive the offended party of liberty, the crime committed is illegal detention. And, if during the course of the illegal detention, the offended party is raped, a separate crime of rape is committed; in this instance, two independent crimes are committed. However, if the objective of the offender is to rape the victim only, and in the process, the latter had to be illegally detained, only the crime of rape is committed since illegal detention is deemed absorbed in rape.

Hence, in *People v. Ching Suy Siong*,[16] Siong was found guilty of two independent crimes, i.e., serious illegal detention and acts of lasciviousness, because the two acts did not come within the purview of Art. 48 of the Revised Penal Code which applies to complex crimes, for certainly, one cannot be considered as a means to commit the other. And, in *People v. Bernal*,[17] the appellants were held guilty of the separate crimes of illegal detention and of multiple rape since the illegal detention was not a necessary means to the commission of the crime of rape, and the offended party could have been raped even if she was not illegally detained.[18] Thus, in *People v. Gan*,[19] on which the lower court entirely based its judgment in convicting the accused in the instant case, Joaquinito Gan was found guilty only of the crime of rape even if he kept the offended party in a hut for about four nights, and there repeatedly raped her. But notwithstanding the Gan ruling, the trial court erroneously declared accused Lactao guilty of the complex crime of rape with serious illegal detention, instead of rape.

Still, however, the case of *People v. Gan*[20] is not applicable since, in the case at bar, the evidence presented by the prosecution is not sufficient to prove the guilt of the accused beyond reasonable doubt. Consequently, we reverse the judgment of conviction.

While the trial court was correct in discrediting the testimony of Avelina Cadag for being "muddled with inaccuracies," and which therefore needs no further elaboration, it failed to reject the testimony of Apolonia which was not only replete with discrepancies but likewise inconsistent with human experience and the natural

course of things. Thus, when confronted by the defense counsel regarding the length of her supposed detention, Apolonia averred -

"Q In the direct examination, you testified that you were detained in the house of the accused for one week. In your affidavit, sworn affidavit, which you executed, you testified that you were detained for two weeks. Now which is correct?

"A The two weeks is correct.

"Q In other words, the one you answered to the question of the Fiscal during your direct examination was or is not true that you were detained for one week?

"A Yes, sir."[21]

When queried as to where she was allegedly abused on 15 April 1979, her answer was -

"Q A while ago you testified that when you lay down you had no mat, you had no pillows nor mosquito net; in Question and Answer No. 10, the accused went inside the mosquito net where you were sleeping. Now which is correct?

"A There was a mat.

"Q In other words, you are changing your answer that you lay down without a mat, without pillows, without mosquito net?

"A I was only mistaken."[22]

And, when asked regarding her age, as the prosecution was trying to establish that at the time the incident happened, the alleged victim was less than twelve years old, she replied -

"COURT:

"Q Why is your age in that affidavit wrong?

"A Because at that time I did not know yet, Your Honor.

x x x x

"ATTY. BORROMEIO:

"Q In other words, even if you did not know exactly your age you answered to the interrogating officer in this affidavit to the question above that your age was 14 years?

"A Yes, sir.

"Q Presently, you testified that your age is 12, is it not?

"A Yes, sir."[23]

The flip-flopping of Apolonia not only creates serious uncertainty in her entire testimony but weakens altogether the case of the prosecution which is left with only her depiction to prove its case after the averments of the other prosecution witness have been totally discredited by the trial court.

Even the medical findings of the resident physician of the Sorsogon Provincial Hospital, Dr. Jaime Co, who examined Apolonia the very day she was said to have escaped, is inconclusive that she was indeed raped. Thus said Dr. Co -

"Q Doctor, what may have possibly caused this old healed laceration at 3:00 o'clock, 7:00 o'clock and 9:00

o'clock?

"A It may be caused by sexual contact, by strenuous exercise like riding on a bicycle.

x x x x

"Q And the cause of the injury could not be exactly determined?

"A Yes.

"Q In fact it could have been caused by continuous scratching of the vagina by herself Apolonia Aramburo?

"A It could be.

"Q And it could be also by climbing a tree considering that Apolonia Aramburo is only about twelve years of age?

"A Possible."[24]

Besides, Dr. Co testified that when he examined Apolonia on 29 April 1979, he found that the lacerations in her hymen had already healed.[25] This contradicts the claim that Apolonia was raped every single day from 15 April 1979 to 29 April 1979.

In fine, inaccuracies between the statement of an alleged rape victim before a municipal judge and her court testimony negate her credibility.[26] Serious inexplicable discrepancies between her previously executed sworn statement and her testimonial declarations raise grave doubt on the veracity of her account.[27]

Furthermore, Apolonia's testimony that she freely and intimately conversed with the children of the accused during her entire detention in the house of the latter where she was repeatedly abused, belies the claim that she was illegally detained, much more, ravished. And, it is highly improbable that accused would abuse Apolonia in the presence of his five children and his wife who, if we are to believe Apolonia, seemed to have enjoyed the horrid scene.

The version of complaining witness Apolonia is simply implausible as perversion has never been considered a part of the Filipino marriage and family life. Indeed, it is difficult to imagine that the accused would rape a young girl, the playmate of his own children, in the presence of the latter, and in front of his amused wife who had just given birth. That is why, we say, the tale is contrary to human experience and our way of life, and thus calls for absolute rejection.[28]

In crimes against chastity, the testimony of the injured woman should not be received with precipitate credulity.[29] The evidence for conviction must be clear and convincing to overcome the constitutional presumption of innocence.[30] Here, the evidence presented by the prosecution was too weak and insufficient to jettison that presumption.

On the other hand, the assertions of the defense remain uncontradicted and thus assume importance when faced with the rather shaky nature of the evidence for the prosecution.[31] The defense then that the charge for rape was trumped-up by Avelina Cadag to blackmail the accused and his family into vacating the land so that she could gather the coconuts herself, even at the expense of exposing the honor of her half-sister, deserves serious consideration. Indeed, it is not far-fetched that the filing of the rape charge against accused Pablo Lactao was motivated by the obsession of Apolonia's family to win back possession of their piece of land tenanted by him.[32]

WHEREFORE, the judgment of the court a quo finding accused PABLO LACTAO guilty of the crime of rape

with serious illegal detention is REVERSED and SET ASIDE, and the accused is ACQUITTED of the crime charged; consequently, his immediate release from confinement is ORDERED unless lawfully held for another cause. Costs de oficio.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., and Quiason, JJ., concur.

[1] In her affidavit, Apolonia said she was 14 years old. However, during her direct examination, she testified that she was only 12. Rectifying the inconsistency, she stated on cross-examination that her age in her affidavit was erroneous, and explaining that at that time she did not know yet her exact age.

[2] TSN, 4 October 1979, pp. 6-7.

[3] Id., p. 27; 6 February 1980, p. 8.

[4] Id., 4 October 1979, pp. 7-9, 26.

[5] Id., pp. 9-12, 22, 24-26.

[6] Id., p. 32.

[7] Id., p. 30.

[8] Id., p. 32-33.

[9] Id., 23 October 1979, p. 11.

[10] Id., pp. 4-6.

[11] Id., 6 February 1980, pp. 22-23.

[12] Id., p. 20.

[13] Id., pp. 3-4.

[14] Judge Rustico de los Reyes, presiding.

[15] Decision of the trial court, p. 9.

[16] 97 Phil. 989, unrep. (1955).

[17] No. L-30483, 31 July 1984, 131 SCRA 1.

[18] Compare with *People v. Ablaza*, No. L-27352, 31 October 1969, 30 SCRA 173, where Ruben Ablaza was charged by Annabelle Huggins with forcible abduction with rape, and while the case was pending, he kidnapped Annabelle, detained her for a week for the purpose of causing her to withdraw her previous charge against him, and while under detention, raped her again, the crime committed is serious illegal detention because the act of rape was incidental and used as a means to break Annabelle's spirit and induce her to dismiss the criminal charge.

[19] No. L-33446, 18 August 1972, 46 SCRA 667.

[20] Id.

[21] TSN, 4 October 1979, pp. 26-27.

[22] *Id.*, p. 23.

[23] *Id.*, pp. 15-16.

[24] TSN, 23 October 1979, pp. 5-7.

[25] *Id.*

[26] See *People v. Nuñez*, G.R. No. 79316, 10 April 1992, 208 SCRA 34.

[27] *People v. Casim*, G.R. No. 93634, 2 September 1992, 213 SCRA 390.

[28] *People v. Dag-uman*, G.R. No. 96548, 28 May 1992, 209 SCRA 407.

[29] *People v. Casim*, *supra*; Note 27.

[30] *People v. Tiwaken*, G.R. No. 92988, 9 September 1992, 213 SCRA 701

[31] *People v. Ambih*, G.R. No. 101006, 3 September 1993.

[32] See *People v. Nuñez*, *supra*; Note 26.

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