

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GORGONIO RESANO, DEFENDANT-APPELLANT.

G.R. No. 57738. October 23, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

Charged and prosecuted for RAPE before the then Court of First Instance of Leyte, under Criminal Case No. 3557, GORGONIO RESANO was, after trial following a plea of not guilty entered upon arraignment, convicted and thereafter sentenced to Reclusion Perpetua; to indemnify the complainant in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency; and to pay the costs.

Seeking the reversal of the said judgment, accused ventilated an appeal therefrom to this Court, con-tending that the trial court erred - (1) in finding him guilty of rape; (2) in not considering his defense; (3) in not finding that the complainant's motivation in filing the rape case against him was revenge; (4) in giving credence to complainant's testimony despite various contradictions and inconsistencies; and (5) in imposing the penalty of reclusion perpetua upon him.

The facts that gave rise to appellant's prosecu-tion and which later brought about his conviction are aptly summarized in the People's Brief[1] as follows:

"Teofila Cabug-os, a 16-year old lass from barrio Cambulao, Alangalang, Leyte, was boarding at the house of Rufino Esco located at Real Street, Tacloban City. She was a second year high school student at the Leyte Ins-titute of Technology in Tacloban.

The appellant, Gorgonio Resano, 24, single, laborer, a native of Wright, Samar, was staying at the house of Gre-gorio Nobleza which is the second house from Rufino Esco's house. Wilma Collera, a niece of Gregorio, was living in the same house.

Teofila and Gorgonio are cousins, their fathers being half-brothers.

At about 2:00 o'clock in the after-noon of August 3, 1979, Teofila was arranging her things in her boarding house. While she was putting things in order, she was called by Gorgonio who said that Gregorio Nobleza wanted to send her on an errand. Teofila used to run errands for Gregorio who happens to be her uncle-in-law, so she went to the house of the latter as beckoned by Gorgonio.

While Teofila was inside Gregorio's house, Gorgonio immediately closed the door. He held Teofila by her hands and dragged her to the room of Wilma Collera. Wilma and Gregorio were out of the house at the time.

Frightened, Teofila asked Gorgonio what he wanted when Gregorio was not around, but Gorgonio just kept silent. When she was then held and dragged into the room, Teofila resisted but could not hold on because she was small. She shouted for help (tabag) but Gorgonio covered her mouth with his hand.

While inside the room, Gorgonio kissed Teofila on her cheeks and laid her down on the floor. With a kitchen

knife pointed to her breast, Gorgonio told Teofila "If you will make any noise, I will kill you". Gorgonio then removed Teofila's panty and raised her legs. Teofila resisted and pushed Gorgonio but it was a futile struggle because "I was already weak at the time". After removing his shorts, Gorgonio placed himself on top of Teofila and succeeded in raping her.

Teofila cried in pain. Then she fainted. When she regained consciousness, Gorgonio was no longer inside the room. There was blood on her thighs. Her virginity was lost (TSN, December 18, 1979, pp. 2-30).

That same afternoon, Teofila's sister, Elvira who was married to somebody from Tacloban, arrived at her boarding house to deliver some provisions. Teofila told her sister what happened to her. Elvira wanted to see Gorgonio but he did not show up. So Elvira went to Alangalang to inform their parents about the incident. (Id., p. 31) Meantime, Teofila took a bath and washed herself (Id., p. 33).

The following day, August 4, 1979, Teofila's mother, Cresencia Ladura Cabug-os, together with two policemen from Tacloban, Sgt. Florentino Abella and Pat. Dumaguil, arrived in early morning. They went to the house of Gregorio Nobleza and asked for Gorgonio. Gregorio told them that Gorgonio was just changing his clothes. Gorgonio never showed up. He eluded arrest by jumping out of the kitchen of the house (Id., pp. 31-33).

At about 11:00 o'clock that same morning, Teofila and her mother went to the Leyte Provincial Hospital for physical examination. She was examined by Dr. Victor Aya-ay. (Id., pp. 34-35)

The physical injuries report dated August 6, 1979, Exhibit "A", contained the following findings:

Linear abrasion middle

3rd right forearm.

Linear abrasion left and

right foot.

Ruptured hymen.

Fresh Lac. on 3:00 p.m. and 6:00 p.m.

IE Speculum exam.

Vaginal-Admit 1 F.

Cervix close firm small

Uterus - small

With lac. at 12:00 o'clock,

at 3:00 o'clock,

8:00 o'clock to 10:00 o'clock.

Smear finding-negative sperm.

On August 6, 1979, Teofila gave her statement to the police. She signed the complaint on August 27."

Accused-appellant did not take the witness stand. Through the combined testimony of his witnesses Hermelinda Candaza and Arcadia Octaviano, he attempted to establish that he could not have possibly committed the crime imputed against him because at about two in the afternoon of August 3, 1979 (time and date of the alleged

commission of the offense) he was at the balcony of the house of Gregorio Nobleza; that while seated in the said balcony, complainant Teofila went up the house of Nobleza and merely asked money from the accused who readily gave her P3.00; that thereafter complainant, after a short conversation with the accused, left followed a little later by the latter.

The appeal is without merit. Consequently, the judgment appealed from must be AFFIRMED.

Appellant's assignment of errors may be synthesized into two (2) main issues; namely - (1) whether or not appellant had sexual intercourse with the complainant, and if so, whether or not the same was effected through force and violence; and (2) whether or not the penalty of reclusion perpetua is the proper imposable penalty.

In denying the accusation against him, accused-appellant theorized (not proven) that complainant was merely utilized by her parents to institute this RAPE case in order to get even with him. And this was because complainant's father (Nicanor Cabug-os) was prosecuted for theft of coconuts which the latter believed was committed by the herein appellant. That case was however already terminated and complainant's father was acquitted.

Appellant's aforesaid ratiocination hardly persuades Us. Being of tender age, shy and ignorant of the sophistication of city life, it is too taxing to believe that considering her innate modesty, humility and purity as a young Filipina, she would have allowed herself to be the object of public ridicule, shame and obloquy as a victim of sexual assault or debauchery[2] simply to settle a score her father has with the appellant, which is not even borne out by the records. There is no evidence showing that complaint's parents are so vile and heartless as to go to the extent of exposing and subjecting their innocent daughter to public ridicule and humiliation just so they could wreck vengeance on the appellant for a very insignificant accusation of theft, which anyway has already been terminated. In fact, no satisfactory evidence on record exists showing that complainant's parents really harbor any ill-feeling against the appellant because of that theft case. As earlier held by this Court a true Filipina would not go a-round in public unravelling facts and circumstances of her defloration for no reason, if such were not true.[3]

Besides, this revenge theory could be better developed and explained by the appellant himself. But as herein earlier stated, he did not take the witness stand to personally refute the charge and accusation against him. He, of course, has a right not to do so and his failure and/or refusal to testify shall not in any manner prejudice or be taken against him.[4] But where the prosecution has already established a prima facie case, more so when the offense charged is grave and sufficient enough to send accused behind bars for life or may even warrant the imposition of the supreme penalty of death, then in order to meet and destroy the effects of said prima facie case and so as to shift the burden of producing further evidence to the prosecution, the party making the denial must produce evidence tending to negate the blame asserted to such a point that, if no more evidence is given, his adversary cannot win the case beyond a reasonable doubt. In such situation, it may be necessary for the accused to have a complete destruction of the prosecution's prima facie case, that he take the stand since no hardship will in any way be imposed upon him nor advantage be taken of him.[5] If he fails to meet the obligation which he owes to himself, when to meet it is the easiest of easy things he has to do, then he is hardy indeed, if he demands and expects that same full and wide consideration which the state voluntarily gives to those who, by reasonable effort seek to help themselves.[6]

In the instant case, appellant merely content himself in presenting two (2) alleged neighbors of his (Hermelinda and Arcadia) who testified that they saw complainant merely went up the house of Nobleza, talked with the appellant, then asked for and was in turn given P3.00 for the movies. Thereafter, following a short conversation, complainant left, followed later by the appellant.

Such a narration does not preclude appellant's having committed the offense for which he is now charged, rape being an offense that takes but a short time to consummate.[7] Moreover, these two neighbor-witnesses were not shown to have focused their attention all the time to the two of them the whole afternoon of August 3, 1979.

But what militates very heavily against the veracity of appellant's feigned innocence is his flight in order to avoid arrest and apprehension by the authorities. After the complaint was lodged with the Tacloban police, Sgt. Florentino Abella and Pat. Dumaguil accompanied by complainant's mother, immediately proceeded to the place of the appellant. Upon knowing of these policemen's presence and purpose appellant, instead of voluntarily submitting himself to them and face his accuser, right then and there jumped out of the window of Nobleza's house and thereafter went into hiding, so much so that he was arrested only after a month later. Said actuations of his bring him within the confines of that off-repeated adage "the wicked flee even if no one pursueth, but the righteous are as brave as a lion." Complainant is a close relative of the accused-appellant, their fathers being half-brothers. If he had not committed anything wrong against her, then he should be brave enough to face her, irrespective of the time and place and even in the presence of police authorities or anyone for that matter, and deny the charge levelled against him. His shying away from the police authorities and the complainant at a time when the case brought against him was being investigated bet-rays the verity of his pretense and serves as a presumptive evidence of guilt.[8]

Appellant bewails the alleged delay in the prosecution of the instant case. We, however, fail to appreciate the delay claimed by him. The sexual assault took place in the afternoon of August 3, 1979. Right then and there, the complainant went home and reported the unholy incident first to her sister and later to her parents. The next day, August 4, she was already at the police station of Tacloban City where she lodged her complaint against the appellant and gave her statement to the police. She submitted herself to physical examination at about eleven o'clock in the morning of that same day. Against that factual backdrop, We cannot appreciate the delay asserted by the appellant.

In support of his aforesaid submission, appellant cites and relies upon the case of *People vs. Cueto*[9] wherein it was held that - "a delay in the filing of the complaint and the fact that the complainant did not submit immediately to medical examination generates doubt x x x x. She should have acted with promptitude if it were true that she was an unwilling victim of a grievous outrage."

In the aforesaid *Cueto* case, the forcible sexual intercourse took place on June 28, 1974. The complaint was filed with the police only on January 10, 1975, or more than six (6) months thereafter. On top of that, complainant submitted herself to a physical and/or medical examination only on February 7, 1975 when she was already eight to nine months pregnant. Clearly then, there is no parity of facts between that case and the case at bar, so as to make the dictum therein laid down applicable to the instant case.

Our review and scrutiny of the evidence on record fully convinces Us of the guilt of the accused-appellant beyond reasonable doubt. His defense cannot prevail over the un rebutted positive declarations of the complainant Teofila Cabug-os whom the trial court found to be credible. Her testimony given in a spontaneous and straight forward manner, stood undemolished despite rigid and piercing cross-examination and carries no earmarks of fabrication. Neither did We find any convincing reason nor circumstance of note that will nullify the truth of her assertions. The events taking place following the sexual abuse upon her femininity - she did not loss time in informing her relatives and re-orting to the police authorities the sexual affront against her and thereby immediately submitting herself to medical examination following the outrage on her person - all indicate that the charge was not a frame up one.[10]

The last point raised by the appellant is the correctness of the penalty - Reclusion Perpetua - imposed upon him.

Appellant contends that -

"Assuming arguendo that accused-appellant is guilty in this case, yet the imposition of the penalty of reclusion perpetua is a reversible error considering that while it is true that under RA 4111, the use of a deadly weapon is a qualifying circumstance in the crime of rape; yet, the Information states no use of deadly weapon in the commission of the alleged Rape nor that the deadly weapon (knife) ever presented in evidence. Moreover, if at all a deadly weapon was used, such would be considered only as an aggravating circumstance where the penalty would only be reclusion temporal in its maximum period under Article 335 of the Revised Penal Code."

Appellant's aforesaid submission is devoid of merit. Under Article 335 as amended by RA 2632 and RA 4111, the crime of simple rape is punishable by reclusion perpetua. If committed with the use of deadly weapon or by two or more persons, the imposable penalty is Reclusion Perpetua to Death.

The crime committed by the appellant being that of simple rape, and there being no circumstance that will either mitigate or aggravate his criminal liability, the trial court committed no error in imposing the penalty of Reclusion Perpetua upon him.

In convicting the appellant, the trial court ordered him to indemnify the complainant only in the amount of Twelve Thousand (P12,000.00) Pesos. The in-demnity now should be Thirty Thousand (P30,000.00) Pesos.

WHEREFORE and except thus modified, the judgment appealed from is AFFIRMED with costs against appellant.

SO ORDERED.

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

Concepcion, Jr., J., no part.

[1] Pages 1 to 4, Appellee's Brief.

[2] People vs. Senon, Jr., 121 SCRA 141; People vs. Balane, 123 SCRA 614; People vs. Fernandez, 124 SCRA 319; People vs. Oydoc, 125 SCRA 250.

[3] People vs. Felipe, 115 SCRA 88; People vs. Sambangan, 125 SCRA 726.

[4] Rule 15, Sec. 1, Par. (d), Rules of Court.

[5] U.S. vs. Chan Toco, 12 Phil. 262.

[6] U.S. vs. Tria, 17 Phil. 303.

[7] People vs. Tamayao, 120 SCRA 412.

[8] People vs. Pajenado, 69 SCRA 172; People vs. Fernandez, 124 SCRA 319.

[9] 84 SCRA 774.

[10] People vs. Tamayao, 120 SCRA 412; People vs. Maala, 122 SCRA 812.

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