

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FEDERICO B. BELMONTE, DEFENDANT-APPELLANT.***G.R. No. 58199. July 05, 1983*

Ponente: RELOVA, J.

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This is an appeal from the decision of the Court of First Instance of Nueva Vizcaya, Branch II at Bayombong, convicting Federico B. Belmonte of the crime of rape and sentencing him "to suffer the penalty of reclusion perpetua and civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon, in accordance with Art. 41 of the Revised Penal Code." (p. 32, Rollo)

The People's version of the facts is as follows:

"In Malasin, Dupax del Norte, Nueva Vizcaya, in the evening of April 28, 1973, appellant, together with Godofredo Zarate, Rogelio Pontalba, and Ernesto Gabanes, allegedly had a drinking spree. He got drunk and Godofredo brought him to his house at around 9:00 p.m. Godofredo is a brother of complaining witness Elvira Zarate. Godofredo had appellant sleep on his bed upstairs, where they slept together. Appellant did not know if there were other persons awake (TSN, pp. 57-60, Sept. 17, 1975) Godofredo, who denied this version, said he slept downstairs that night as he had a stomach ache (TSN, pp. 100-102, Id.). Julita Zarate, a sister of complaining witness Elvira Zarate, testified that appellant came upstairs unnoticed (TSN, p. 6, June 9, 1975).

"In any case, at about 11:00 that same evening, while complaining witness Elvira Zarate was sleeping in a room upstairs, she felt someone's weight on one of her legs, and thought at first it was her niece. Through her drowsiness, she hazily sensed that her short pants (Exh. D) and panty (Exh. E) were removed (TSN, pp. 5-13, Jan. 7, 1976).

"As it turned out, it was accused Federico Belmonte, who lost no time in sitting astride her and began sexual intercourse with Elvira, who fiercely struggled against him, kicking and pushing him. But, all to no avail. Accused, 'huskier and heavier,' covered her mouth with a blanket to prevent any outcry. While on top of her, accused held her hands (TSN, pp. 14-16, Id.).

"Notwithstanding the struggle she put up, accused succeeded in inserting his penis into her vagina, straddled as he was atop her 'in a front[al] position', with his body feverishly 'moving up and down.' To dislodge him, she raised her pelvis sideways. Appellant also kissed her and fondled her nipples, already weak as she was. (TSN, pp. 35-39, 44-46, 52-54, Id.).

"At the time, Julita was sleeping on a cot (Exh. A-2) by the window in the room upstairs (Exh. A-1). Elvira and their nieces, Josie and Teresita, were sleeping on the floor (TSN, pp. 12-15, June 9, 1975). Julita was awakened when she heard her sister Elvira call: 'Manang! Manang!' She failed to heed her call. However, she seemed to sense some struggle in the dark. For the second time, Julita heard Elvira, this time an outcry, as if in distress: 'Manang, ni Bondying ni-rape nak!' (Manang, Bondying raped me), referring to appellant (TSN, pp.

17-23, June 9, 1975).

"Elvira stood up and lighted the lamp (Exh. A-4) placed on a trunk or 'baul' (Exh. 3) (TSN, pp. 11, 15-16, 47, Id.). Fully awake, she saw that appellant was half-naked, except for a brief, seated on the floor beside her sister, Elvira. Sobbing, Elvira told Julita that she was raped. (TSN, pp. 7-9, Id.)

"Immediately, Julita ran downstairs to inform their parents of what happened. Returning upstairs, she saw that appellant was in his brother's bedroom, pretending that he was asleep (Exh. A-9). He was already clothed. Getting hold of a belt (Exh. B) belonging to appellant, which she found on top of a cabinet (Exh. 10), Julita thrashed him with it. He continued pretending to be asleep. Her father, who followed upstairs, also was about to beat appellant, but was prevailed upon to desist by his wife, Juanita (TSN, pp. 30-35, Id.).

"Dr. Felicitas B. Baylon, resident physician of Magsaysay Hospital, Bambang, Nueva Vizcaya, who physically examined complaining witness (TSN, pp. 81-95, June 9, 1975), submitted the following medical findings:

'FINDINGS:

'A. INTERNAL EXAMINATION:—

"(1) presence of superficial fresh perineal lacerations at 4, 5, & 6 o'clock position, tender and bleeds on slight touch.

"(2) Introitus admits two (2) fingers easily without resistance.

'B. LABORATORY EXAMINATION:—

Vaginal smear for spermatozoa—positive.

(Exhs. C, C-1)"

(pp. 1-5, Appellee's Brief)

The brief of appellant Federico B. Belmonte prays for the reversal of the judgment and assigns four (4) errors as having been committed by the lower court. The first error speaks of the trial court's giving weight to the testimony of the complaining witness which is totally against the ordinary reaction of a young lady under the circumstances she allegedly underwent. The second refers to the testimonies of prosecution witnesses Julita Zarate and Juanita Pontalba-Zarate which are merely hearsay and immaterial and full of contradictions on material points. The third decries the lower court in giving full weight to the testimony of Dr. Felicitas Baylon who conducted the medical examination of the complainant "without taking into consideration the time when the alleged incident took place and the time when the examination was conducted." Lastly, appellant contends that the trial court should have given full weight to his testimony that the charge imputed to him is not true although he admitted that he slept in the house of the Zarates upon invitation of complainant's brother, Godofredo; and to the testimony of Councilman Alfredo Ordinario that the accused could not have possibly committed the crime charged because of his physical frailty and total drunkenness.

At the outset, We note a number of significant facts from the recorded evidence of the prosecution which materially and substantially decry the theory of the government. The circumstances of persons and place attendant at the time of the alleged commission of the crime do not build up a case for the People. On the contrary, We find facts which contravene the story of the complainant regarding the alleged crime.

- Complainant Elvira slept with her elder sister, Julita (20 years old) and nieces, Jocelyn Daguro (7 years old) and Teresita Lilaga (3 years old) in the same room. She and her two nieces slept on the floor while Julita was on a bed. Her sister and two nieces were already asleep when she noticed the arrival of her brother and the accused at

their house. She was awakened when the accused was on top of her but before he inserted his sexual organ into hers he played with her nipples, kissed and embraced her. On this point, complainant answered questions from the Court, as follows:

"Q

You stated that the accused removed your pants and your pantie. By stating that, do you mean to say that your pants and pantie were completely removed from your legs?

A

Yes, sir.

Q

The accused took off your pantie and your pants after he had been playing your nipples and kissing you?

A

He first took off my short pants and pantie, sir.

Q

What did you do when the accused was removing your pants and your pantie?

A

I kicked him and I struggled, sir.

Q

What was the position of the accused in relation to you as he removed your pants and pantie?

A

He was in a bending position." (tsn., pp. 49-50, Jan. 7, 1976 hearing, Underscoring supplied)

Why did she not shout to awake her sister Julita who was just sleeping nearby. It has not been shown that appellant was armed with any weapon so as to frighten her not to shout or do anything to call the attention of the other residents of the house. Her father, mother and brother were also in the house at the time and an outcry from her would have easily made them come to her side.

- Julita Zarate, an engineering student and a sister of the complainant, testified that the room where they slept that evening was about 5 x 6 square meters. The complainant was about two meters away from her. On cross-examination, she stated that when she awoke and saw her sister, the complainant, Elvira, the latter was completely naked. She testified, thus:

"Q

You mean to say that at the time you lighted the lamp you saw your sister lying down?

A

She was not lying down. She was seated on the mat, sir, and trying to put on her clothes.

FISCAL VIGILIA:

Q As Elvie was seated on the mat what was her appearance?

A She was putting on her clothes.

Q What clothes was being put on by Elvie?

A Short pants and blouse, sir.

COURT:

Q

When you say that you saw Elvie putting on her short pants did you see her tying to insert her short pants on her legs?

A

I think she was already finished putting on her short pants, but she was only trying to put it up.

Q

How about her blouse, was she just putting it on her body at that time?

A

Not yet. Only her short pants and blouse.

Q

That is it. Her blouse. When you lighted the lamp was she trying to put on her blouse on her body?

A

Yes, sir.

Q

When you say she was trying to put on her blouse on her body, was she inserting it on her head, is that it?

A

That was she was only trying to insert it on her body, sir.

.....

"ATTY. RAÑON:

Q

When the lamp was lighted you stated that you saw your sister?

A

Half naked.

Q

Don't you remember that in the direct examination you were saying to the Court that you saw your sister in the act of putting on her blouse, is that it?

A

Yes, sir.

Q

In other words, do you want to create the impression that before that time she was putting on her blouse your sister was completely naked?

A

She was completely naked." (tsn., pp. 24-25, 60, June 9, 1975 hearing)

This is contrary to the declaration of Elvira that it was only her panty and short pants which were taken off by appellant. Why was she naked? Was it complainant herself who took her clothes off. She did not say that it was appellant who did it; therefore, she must have been the one who took them off in cooperation with the desire of appellant.

- Julita rushed down the ground floor to her parents after she saw Elvira without her clothes on and the appellant in their room. When they returned, the accused was already in another room pretending to be asleep. And, in her sworn statement (Exhibit 1) given to the Philippine Constabulary five (5) days after the incident, she did not mention the fact that her sister Elvie had told her that "Bondying raped me," explaining that she failed to say it because there was much confusion at the time (tsn., p. 45, June 9, 1975 hearing).

As stated in the case of *People vs. Leones*, 117 SCRA, 383, "[R]ape is a most detestable crime. It should be severely and impartially punished. But a rape charge is easy to make, hard to prove and harder to defend by the party accused, though innocent. Experience has shown that unfounded charges of rape have frequently been preferred by women, actuated by some sinister, ulterior or undisclosed motive. Convictions for such crime should not be sustained without clear and convincing proof of guilt. On more than one occasion, it has been pointed out that in crimes against chastity, the testimony of the injured woman should not be received with precipitate credulity. When the conviction depends on any vital point upon her uncorroborated testimony, it should not be accepted unless her sincerity and candor are free from suspicion."

In crimes against chastity, the conviction or acquittal of an accused depends almost entirely on the credibility of the complainant's testimony, considering that by the nature of these crimes, they usually involve only two persons. Thus, the testimony of said complainant must be thoroughly scrutinized to determine its veracity. In the case at

bar, there is much to be desired in the declaration of Elvira which does not jibe with that of her sister Julita, making Us conclude that the charge of rape is highly dubious and inherently improbable. We are convinced that the guilt of appellant has not been proved beyond reasonable doubt. That moral certainty or degree of proof which produces conviction in an unprejudiced mind (Section 2, Rule 133 of the New Rules of Court) has not been established by the prosecution. The presumption of innocence in favor of the accused must prevail and, therefore, appellant Federico B. Belmonte is entitled to an acquittal.

WHEREFORE, the judgment of conviction is hereby REVERSED and the accused-appellant Federico B. Belmonte is ACQUITTED of the crime charged.

SO ORDERED.

Teehankee (Chairman), Plana, Escolin and Gutierrez, Jr., JJ., concur.
Melencio-Herrera and Vasquez, JJ., are on leave.

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