

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCELINO BULOSAN, DEFENDANT APPELLANT.

*G.R. No. 58404. April 15, 1988*

Ponente: GUTIERREZ, JR., J.

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### GUTIERREZ, JR., J.:

This is an appeal from the decision of the then Court of First Instance of Ilocos Norte and Laoag City, Branch V finding the accused Marcelino Bulosan y Daguio alias "Marcey" guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, to pay the offended party Clarenzia Calventas (now Mrs. de la Cruz) the sum of P12,000.00 as moral damages and to pay the costs.

The information filed against the accused alleged:

"That on or about 27 May 1978, in the municipality of Pasuquin, province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Marcelino Bulosan, alias 'Marcey', armed with deadly sharp pointed weapon, and by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously lie with and succeed in having carnal knowledge of offended party, CLARENCIA R. CALVENTAS, an unmarried 21 year old woman, against the will and without the consent of the latter, as said accused pointed the deadly weapon on the neck of the offended party and threatened her and her family with death if she refused." (p. 6, Rollo)

The lower court established the appellant's guilt beyond reasonable doubt on the basis of the prosecution's evidence as follows:

"With the use of a fine-toothed comb, so to speak, in culling it from the evidence, the Court would now summarize the version of the complainant, Clarenzia R. Calventas. First of all, let us have a look at her person and personal circumstances. She is personable (like the accused). She got married to Bienvenido de la Cruz on September 24, 1978 - after the alleged rape on or about May 27, 1978. She was 22 years of age when she testified on December 20, 1978, a resident of Pasaleng, Pagudpud, Ilocos Norte, high school graduate, and had finished a two-year secretarial course.

"She first came to know the accused in or about the third week of April, 1978, when the latter and his uncle went to Pasaleng, Pagudpud, and sold salt to persons there, including her parents with whom she lived. Patricio Bulosan (brother of the accused) had married Bernarda Bulosan first cousin of her (complainant's) father. As the father of the accused was an uncle-in-law to her, the accused himself was somewhat of an uncle to her.

"Her boyfriend then, Bienvenido de la Cruz (her husband now), wrote to her and asked her to meet him on the early morning of May 27, 1978, at what used to be the Villarey Station in Laoag City (see Exhs. B, B-1, B-2). So, on the morning of May 26, 1978, she and her sister boarded a minibus at Pasaleng and went to Laoag City, arriving there between 1:00 and 2:00 P.M. To pass the time, she decided to visit her aunt, Bernarda Bulosan (first cousin of her father and sister-in-law of the accused), at Nagsanga, Pasuquin (her aunt's residence), as her aunt had previously invited her to go there. She reached the poblacion of Pasuquin between 3:00 and 4:00 o'clock that afternoon, riding by minibus. Nagsanga is a barangay north of the poblacion. She was in front of

the market compound in the poblacion when the accused saw her and asked her where she was going. She answered that she was going to visit her aunt Bernarda.

"The accused called a tricycle on which she and the accused rode together to Nagsanga. When they reached the place, the accused told her that her aunt was not at home yet and that he could show her places in the meantime. They proceeded northwards to Sexy Beach, about a kilometer away from Nagsanga. On the tricycle, the accused sat behind the driver and she was in the sidecar. Upon arrival at the Sexy Beach at about 5:00 P.M., the accused instructed the driver to return after an hour, telling her that her aunt would have arrived by then. They came upon other people on the beach. They sat and talked at a shaded table. The accused asked her about her boyfriend, and she told him that she would be meeting her boyfriend early the following morning.

"The tricycle returned after about two hours. They rode on it. When they reached the highway, a woman boarded the tricycle, sitting beside her. The woman was delivered to her destination several kilometers further north.

"They returned back to the south. When they were passing by Nagsanga, she told the accused that she would alight there, but he suggested that they had better catch up with the last trip to Laoag City. She agreed so that she could meet her boyfriend early the following morning. When they reached the poblacion of Pasuquin, there was no ready ride available - so, she said she would have to wait for a ride coming from Cagayan and going to Laoag City. The accused told her he was hungry and would like to eat first, after which he would accompany her to Laoag City on the tricycle. She consented, having confidence in the accused.

"They rode on the same tricycle to the house of his sister, Corazon Caldito, in the poblacion of Pasuquin. The accused told the driver to return for them after they shall have taken their supper. She and the accused entered the house, going up to the upper floor. His sister told him: 'You take care of matters.'" She did not talk to the sister, but saw her enter a room on the upper floor. The sister of the accused had gone to Pasaleng to sell salt.

"She and the accused entered another room on the upper floor. The walling of the room was of carton. It was then about 8:00 P.M. Inside the room were cooking paraphernalia, plates, clothes, a table and a bed, among other things. The accused set the table. He alone ate. She could not eat, worried as she was about her appointment with her boyfriend. As he was eating, she read comics across the table from him. There was a lighted gas lamp on the table.

"After he had eaten, as the tricycle had not yet returned, she asked him if there was some other ride for Laoag City. There was none other, he told her.

"The tricycle driver returned late that evening, calling for the accused. The accused went downstairs and returned to the room with the driver. The driver told her that the tricycle had a flat tire, but assured her that he would bring her to Laoag City as soon as he could fix it. The driver left.

"She and the accused then talked in the room for more than thirty minutes. He told her that they wait for the tricycle and that he would also go to Laoag City to meet her boyfriend.

The accused unrolled a mat on the floor and lay thereon in polo shirt and shorts (he had removed his pants). He told her to rest on the bed. The bed was about three meters away from the mat in the same room. She lay on the bed in her long pants (Exh. A) and shirt with collar (Exh. F). She could not sleep yet as she was worried.

"She must have slept because she was awakened when the accused was kissing her on the lips. The accused was bending down over her, with his hands pressed to the sides of her head. She tried to bite his lips or shoulder but no avail. She also tried to evade his lips, but she could not turn her head aside because of his hands.

"She pushed him by the shoulders. Momentarily, she felt something cold and pointed pressed by the accused against her neck. She felt pain. She got nervous. There were no more lights in the room, but she recognized the

accused. She did not see what that cold and pointed thing was. While he was pressing it, he said: 'I am going to kill you if you do not give me a chance, and do not shout because really I am going to kill you and the rest of your family.' The more she got nervous. He even told her that he could do anything he wanted as he was a member of the NPA. She was then trembling.

"He unfastened the hook and eye of her pants and tried to pull it down. She resisted by taking hold of the waistline of her pants. The zipper of her pants was damaged. (Exhibit A, her long pants, shows damage to the bottom of the zipper rendering it unworkable.) Then, she felt something hard strike her left lower abdomen. It must have been the accused who struck her as there were only the two of them. With his hands, he pressed both sides of her lower abdomen. Her body was numbed. She lost consciousness or at least, became semiconscious. While she was in that state of unconsciousness or semiconsciousness, he was able to remove her pants and panties (Exh. D). She regained full consciousness as she felt the pain arising from his having inserted his penis in her vagina. He was on top of her, making up and down movements. With all the strength she could muster, she pushed him and he fell to the floor. Then he went to the window, looked out, and went downstairs. She put on her panties and pants. Although the zipper of her pants was out of order, its hook and eye held it in place.

"The accused returned and pulled her downstairs, telling her that the ride was already there and to keep quiet and to follow what he dictated, otherwise she would be harmed. The accused told her to ride on the motorcycle (the same that they had ridden on but without sidecar now), saying that 'they would kill her, the more that would not bring her to Laoag City, if she made any noise cried for help.' The driver was the same - by the name of Roberto Dancel (as she came to know later). She was crying.

"She was brought to Laoag City on the motorcycle. The accused drove it, she sat behind the accused, with Dancel behind her. It was about 5:00 A.M. (May 27, 1978) when they reached the former Villarey station in Laoag City. There, her brother-in-law, Diosdado Ganaban, saw and called her. The accused stopped the motorcycle and told her to keep mum, otherwise he would kill her. She ran to where her brother-in-law was standing. Nearby was her boyfriend, Bienvenido de la Cruz, inside a tricycle. She boarded the tricycle. Her boyfriend asked why she was not talking, but she did not answer, out of fear and shame. She and her boyfriend and brother-in-law, aside from the driver, rode on the tricycle and went to the house of her aunt Conchita Caday in Laoag City. The accused and Dancel on the motorcycle, tailed them to said house, but left after she and her companions entered the house.

"Her boyfriend had a fever; she gave him medicine. They stayed in the house of her aunt Conchita from that morning of May 27 until lunchtime of May 28, 1978, when her boyfriend had gotten well. She and her boyfriend, her aunt Conchita and brother-in-law Diosdado went to Pasaleng, Pagudpud, to talk with her parents about her marriage to her boyfriend, arriving there at about 7:00 o'clock on the evening of May 28. Her parents were not at home as they had gone to the sea. Only her brothers and sisters were at home. Her boyfriend's fever recurred. He slept in a room on the upper floor. She slept in another room on the same floor.

"Her parents arrived at dawn of May 29, 1978, bringing home fish. Some five minutes after their arrival, she told her parents that the accused had abused her in Pasuquin. They cried and asked her if she had informed her boyfriend. Not yet, she said. Together with her parents, brothers and sisters, aunt Conchita and brother-in-law Diosdado, she went upstairs to where her boyfriend was. Her father made the revelation to her boyfriend. The latter was surprised. That same day of May 29, her father went to the barangay captain's but the captain was not in. On the evening of that day, they reported the matter to the PC authorities in Camp Juan, Laoag City. That same evening, she was examined by Dr. Artemio Carlos in the provincial hospital in that City. She returned to Camp Juan the following day, May 30, when her statement (Exh. 2 pages 3-5 of the records) was taken.

"By her calculation, the incident complained of happened between 3:00 and 4:00 o'clock on the morning of May 27, 1978. She said she had had trust and confidence in the accused who to her was somewhat of an uncle.

According to her, she suffered mental anguish because of what had happened to her.

xxx xxx xxx

"Bienvenido de la Cruz, boyfriend of the complainant at that time of the incident in question and sometime thereafter (now her husband), testified on November 28, 1978 (the accused having been arraigned on October 13, 1978). He was cross-examined by the two defense counsel. One after the other. The accused was present in Court. Bienvenido corroborated the complainant's testimony from the time that they met in Laoag City on the early morning of May 27, 1978, until their going to the PC authorities and the provincial Hospital - including, of course, their going to Pabaleng, Pagudpud, and the revelation there made to him by the complainant's father.

"Corroboration came also from Dr. Artemio Carlos, resident physician of the Ilocos Norte Provincial Hospital in Laoag City who examined the complainant in said hospital on the evening of May 29, 1978, at about 8:30 o'clock. He confirmed the findings stated in the medical certificate that he issued (Exh. E, page 2 of the records). His findings on the complainant were:

- contusion at the left iliac region or left lower abdomen;
- old laceration of the vaginal canal between 6:00 and 7:00 o'clock; and
- vagina, negative for spermatozoa." (Rollo, pp. 7-11).

Appellant Bulosan raised the following assignment of errors in this appeal:

## I

"THE TRIAL COURT ERRED IN TAKING COGNIZANCE OF AND TRYING THE INSTANT CASE IN THE FACE OF IMPROPER AND/OR INCOMPLETE PRELIMINARY INVESTIGATION AND, THEREFORE, SAID COURT HAD NO JURISDICTION AND/OR VIOLATED PROCEDURAL RULES.

## II

"THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE VERSION OF COMPLAINANT, CLARENCE R. CALVANTES TO THE EFFECT THAT SHE WAS RAPED BY ACCUSED, MARCELINO BULOSAN ON THE EARLY MORNING OF MAY 27, 1978, IN THE POBLACION OF PASUQUIN, ILOCOS NORTE, IN THE HOUSE OF CORAZON BULOSAN-CALDITO, SISTER OF SAID ACCUSED." (Brief for Accused-Appellant, p. 5)

The appellant contends that he was denied due process because the municipal judge allegedly did not conduct the second stage of preliminary investigation under Sec. 10 Rule 112 of the former Revised Rules of Court. It should be noted that very often the first stage known as the preliminary examination is merged with the second stage or preliminary investigation proper to form part of one integrated proceeding.

The appellant's contention is without merit.

We agree with the observations of the Solicitor General which are supported by the records of the case. The Solicitor General states:

"The records show that appellant was afforded a preliminary investigation in the Municipal Court of Pasuquin, Ilocos Norte. It will be recalled that complainant filed her complaint against appellant before the Municipal Court of Pasuquin on June 6, 1978. After conducting the preliminary investigation, Municipal Judge Pablo R. Galva issued the warrant of arrest for the apprehension of appellant, and, on August 14, 1978, elevated the case to the Court of First Instance of Ilocos Norte. On August 15, 1978, Assistant Provincial Fiscal Garvida filed the information based upon the complaint originally filed by complainant.

"Clearly, therefore, appellant having been afforded a preliminary investigation in the Municipal Court of

Pasuquin, to insist on another one would be to ask for what is a fait accompli.

"Appellant bewails the absence in the information filed by Fiscal Garvida of a certification under oath that the Fiscal has examined the complainant and her witnesses as required by Presidential Decree No. 77 dated December 6, 1972. Appellant's reliance on P.D. No. 77 is misplaced. The said decree applies only to preliminary investigations conducted by Fiscals not those by the Courts. (Tabil and Simbajon v. Hon. Ceferino T. Ong, et al., 91 SCRA 451). As earlier stated, the preliminary investigation in this case was conducted by the Municipal Court of Pasuquin and not by the Fiscal.

"When nothing appears affirmatively upon the record that such preliminary investigation has not in fact been conducted, an objection on the ground of denial thereof will not be sustained, for it will be presumed that the court proceeded in accordance with law (People v. Casiano, 111 Phil. 73 (1961). (Rollo, pp. 95-96)

Moreover, the alleged denial of the right to the second stage of the preliminary investigation was never raised before the trial court. (See People v. Cierbo, 143 SCRA 689).

As held in the case of People v. Monteverde, (142 SCRA 668, 672):

"xxx while generally, a preliminary investigation is mandatory and a certification that such investigation was held is required, still this rule does not apply if the issue is raised only after conviction. Thus, it has been held that after a plea of not guilty to the information, an accused is deemed to have foregone the right of preliminary investigation and have abandoned the right to question any irregularity that surrounds it (See Zacarias v. Cruz, 30 SCRA 728, People v. Beltran, 32 SCRA 71. See also People v. Arbola, L-16936, Aug. 5, 1985)."

The Appellant advances the theory that the filing of rape charges against him was due to the jealousy of the victim's boyfriend (now her husband) Bienvenido de la Cruz. He alleged that de la Cruz was so jealous upon seeing the victim alight from the motorcycle driven by the accused, that de la Cruz boxed the victim. The accused alleges that this accounts for the contusion appearing in the medical examination findings.

Accused Bulosan testified:

"a. Her boyfriend said, 'Vulva of your mother, where did you sleep last night. We agreed that you come and see me.

q.

What more?

a. At the same time, her boyfriend held her hands and knocked the lower portion of her abdomen, sir.

q. Which part of the lower portion, left or right?

a. The left side of the lower portion of her abdomen, sir.

q. After that incident, what did Clarencia do?

a.

Clarencia bowed her head and her boyfriend led her inside the tricycle, sir. (p. 532, TSN, December 20, 1978)

We cannot lend credence to the appellant's theory.

The appellant himself testified that he is treated well by the family of the offended party. (tsn., January 8, 1980, p. 11). In fact, he is called "uncle" by the offended party although it is the appellant's wife who is related to the latter. Clarencia Calventas would, therefore, not file a charge as serious as rape against him just because her boyfriend was jealous.

Moreover, it has long been held that no young Filipina of decent repute would publicly admit that she had been criminally abused and ravished unless that is the truth. It is her natural instinct to protect her honor. (People v. Cruz, Sr., G.R. No. 71462, June 30, 1987). In the case at bar, it was more difficult for the victim to narrate her ordeal as she was then about to be married.

The appellant denies having raped the victim because he is the latter's "uncle."

The fact that the victim is a close relative is not considered a deterrent to rape. (People v. Canoy, 137 SCRA 124).

The appellant questions the credibility of the offended party. He alleges that her testimony was contradicted by that of her boyfriend, de la Cruz regarding her pants' zipper which she testified was destroyed when the appellant forced down her pants to rape her. He pointed out the fact that de la Cruz testified that he (the latter) only noticed that the pants' zipper was broken at the time it was shown to him during the court hearing. (tsn., November 28, 1978, p. 14). If the zipper was indeed broken during the time of the rape, then de la Cruz should have noticed it at the time he met the offended party.

There is no contradiction. It can be seen from the records of the case that de la Cruz did not notice the zipper when he met the offended party as the latter covered it with her bag. (tsn., Supra, p. 12).

Moreover, this involves a minor detail that does not affect credibility as it only refers to a collateral matter which does not touch on the commission of the crime itself. (People v. Ibal, 143 SCRA 317).

We respect the findings of the lower court when it observed, as follows:

"It took her four sittings in Court to finish with her testimony in chief - and close scrutiny would reveal her consistency throughout, her steadfastness. The Court could not but note her sincerity and candor, bespeaking truthfulness and reliability." (Rollo, p. 14)

Finally, the appellant questions the fact that no spermatozoa was found in the offended party's private part.

As correctly held by the lower court, the absence of spermatozoa does not negate the commission of rape. The important consideration is penetration of the labia, no matter how slight and not emission. (People v. Monteverde, 142 SCRA 668; People v. Budol, 143 SCRA 241; People v. Hermosada, 143 SCRA 484; People v. Baraca, 137 SCRA 148; People v. Dadaeg, 137 SCRA 500). The records show that when the victim recovered consciousness she pushed the accused with all her strength causing him to fall from the bed to the floor. He was still performing the sex act at the time.

In view of the foregoing, we hold that the guilt of the accused-appellant Bulosan has been established beyond reasonable doubt.

WHEREFORE, the judgment appealed from is hereby AFFIRMED with the modification that the indemnity to be paid is increased to P30,000.00.

**SO ORDERED.**

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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