

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANDRES GREFIEL, ALIAS EDDIE GREFIEL, ACCUSED-APPELLANT.

G.R. No. 60706. October 15, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Herminia O. Java, a married woman, accused Eddie Grefiel of attempted rape in a verified complaint filed with the Municipal Court of Marabut, Samar, on October 21, 1976. The crime was allegedly committed on September 28, 1976. (Expediente, p. 4; also Exh. B.)

On January 17, 1977, Herminia amended her complaint. Instead of attempted rape, she accused Grefiel of rape said to have been committed as follows:

"That on or about the 28th day of September, 1976, at about 12:30 past noontime, in Barangay San Roque, Marabut, Samar, Philippines, and within the preliminary jurisdiction of this Court, the said accused EDDIE GREFIEL, by means of violence and intimidation, did then and there wilfully, un-lawfully and feloniously have carnal knowledge of the complainant Herminia O. Java, against her will." (Expediente, p. 2; also Exhs. C and C-1.)

Grefiel waived preliminary investigation. The case was elevated to the Court of First Instance of Samar where it was docketed as Criminal Case No. 906. After trial, the court rendered the follow-ing judgment:

"WHEREFORE and in view of the foregoing, judgment is hereby rendered finding accused ANDRES OR EDDIE GREFIEL guilty beyond reasonable doubt of the crime of Rape as charged in the amended complaint, and hereby sentences him to RECLUSION PERPETUA, and to indemnify Herminia Java in the amount of P12,000 without subsidiary imprisonment in case of insolvency and to pay the costs." (Expediente, p. 195.)

The case is now before this Court on appeal.

It was in *People vs. Imbo*, L-36759, August 31, 1972, 166 SCRA 355, where our learned Chief Justice Enrique M. Fernando said:

"The difficulty, recognized and acknowledged, in the decision-making process where the prosecution is for rape, arises from the fact that usually only the participants can testify as to the alleged sexual abuse. The accused may deny such an occurrence, put up the defense that he was somewhere else, or allege the consent on the part of the complainant. The court then is left with no choice but to exert the utmost effort to determine the likelihood that a sexual act did take place and under what cir-cumstances. Such choice is not always easy." (At p. 357.)

The above quotation has complete relevance to the case at bar where only the complainant and the accused gave direct oral evidence on the alleged sexual incident and the latter claimed that he was elsewhere on the date mentioned in the complaint but admitted nonetheless that he had sexual relations with the former by mutual consent.

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

"The complainant, Herminia Java, was at the time of the incident, 25 years old, married to Antonio Java, and residing in the house of Roberta Java, complainant's mother-in-law, at Barangay San Roque, Marabut, Samar. She was then four (4) months pregnant. (pp. 3 & 19, t.s.n., Aug. 1, 1977). Accused Andres Grefiel alias Eddie, on the other hand, was then 33 years old, married, a fish vendor, and residing in the same barangay of San Roque, about ten (10) meters away from complainant's residence. (pp. 84-85, t.s.n., July 10, 1978).

"On September 28, 1976, at about 12:00 o'clock noon, accused Grefiel together with Ernesto Ruste, Guillermo Albarracin, Ponso Parado and Eulogio Batika, were having a drinking spree in the aforesaid house of Roberta Java. Except for Grefiel and Ruste, the three others in the group are brothers-in-law of complainant's husband. (pp. 37-39, t.s.n., March 6, 1978; p. 26, t.s.n., Jan. 4, 1978). At that time, complainant's husband was in Manila (p. 13, t.s.n., Aug. 1, 1977). Her mother-in-law, on the other hand, was in the farm in the mountain.

"At about 12:30 o'clock in the afternoon of same day, complainant went out of the house and proceeded to the coconut plantations of Remigia Dacquittal to answer a call of nature. As she stepped out, accused Grefiel noticed her. And, a few minutes thereafter, Grefiel excused himself from the group. (pp. 39-41, t.s.n., March 6, 1978).

"When Herminia was already squatting on the improvised toilet in the field, reading old magazines while defecating, she heard some footsteps approaching. Upon seeing accused-appellant herein, she abruptly stood up, hurriedly put on her panty, and immediately ran away. The accused, however, chased her. He caught up with her when she stumbled on the roots of a coconut tree. Forthwith, accused Grefiel grabbed her, covered her mouth with his hand, and dragged her towards the bushes. (pp. 3-6, t.s.n., Aug. 1, 1977). Herminia struggled to free herself, but her strength was no match to that of Grefiel's. The accused forced her to lie down, and lasciviously, he placed himself on top of her. He then kissed her, held her breast and private parts, and then tore away her dress. (pp. 6-8, id., Exhs. "A", "A-1" and "A-2").

"Herminia, however, kept on fighting to save her honor. She struggled and kicked, but the accused, who was covering her mouth, succeeded in pinning her legs and body while lying on top of her. Thereupon, the accused forcibly removed her panty. Because of continuous struggle, Herminia weakened. Accused Grefiel, on the other hand, became more ferocious, trying hard to force his organ inside hers. To avoid penetration, Herminia continued to move and struggle. Despite her continuous resistance, however, Grefiel succeeded in having a complete penetration. He followed this with a vigorous push-and-pull movement. After a short while, Grefiel ejaculated. (pp. 8 -11, t.s.n., Aug. 1, 1977).

"Having completed his carnal desire, Grefiel stood up, put on his pants, and left the complainant who was crying in shame. Grefiel then went back to rejoin the group which he left (p. 13, t.s.n., Aug. 1, 1977). Upon his return, he was asked where's the 'pulutan', to which he answered he found none. Quietly, he approached his compadre, Ernesto Ruste, and whispered something. They then partook another round of tuba, after which Grefiel and Ruste asked permission to leave. (pp. 41-43, t.s.n., March 6, 1978).

"Meanwhile, Herminia went home with her torn dress. She avoided being noticed as she was ashamed. (pp. 14-16, t.s.n., Aug. 1, 1977). Quietly, she changed her dress and lay down on bed crying. When her mother-in-law arrived from the farm at about 6:00 o'clock in the evening, she told her: 'Nanay, I was raped by Eddie.' (p. 16, t.s.n., id.). Roberta Java was shocked. She could not comprehend what her son (complainant's husband) would do upon knowing it. She became apprehensive of the embarrassment and humiliation that it would cause. Eventually, Roberta Java advised Herminia to file a complaint, not for consummated rape although that was the crime actually committed, but only for attempted rape, to avoid public humiliation (pp. 63-68, t.s.n., June 1, 1978). When complainant's sister-in-law, Preciosa Albarracin, arrived home a few days later, Herminia also informed her of what had happened. Following the advice of Roberta Java, complainant Herminia was assisted by Preciosa in filing the case for attempted rape against accused Grefiel. (pp. 16-17, t.s.n., Aug. 1, 1977).

"Because of the said incident, Herminia got sick and almost suffered a miscarriage. She was attended by a 'hilot' in the locality to prevent the threatened abortion on her 4-month pregnancy. She was not able to submit herself to medical examination because there was no doctor in their municipality. In the meantime, she informed her husband about the incident through a letter. When her husband arrived home from Manila, she narrated to him what had actually happened. With the help of her husband, she subsequently corrected her complaint to that of consummated rape to state the truth of the incident. (pp. 17-23, t.s.n., Aug. 1, 1977)." (Brief, pp. 1-6.)

Contraposed to the above is the appellant's version which is:

"Accused, Eddie Grefiel, a fish vendor, and the herein complainant, Herminia O. Java, are neighbors at Barangay San Roque, Marabut, Samar. Their houses are just about ten (10) meters away from each other. As early as July, 1976, accused-appellant frequented the house of the complainant almost daily to drink tuba which she sells in her store at her house. Herminia's husband, Antonio Java, was not then at Barangay San Roque as he left the place for Manila more than a year before July, 1976. On those occasions that accused Eddie Grefiel was in the house of Herminia Java to drink tuba, she would tell Eddie Grefiel to bring squid and fish to be made into 'kinilaw' and everytime he would bring fish and squid to Herminia, the latter would tell him to come back to her house to have a drinking spree. These frequent visits of Eddie Grefiel have developed between him and Herminia Java an intimacy that eventually the two ended as lovers. For the first time they consummated their carnal desire for each other in that coconut plantation of Remigia Daquittal located a few meters away from the house of Herminia. The place became the usual place of rendezvous for the two as several other meetings took place thereat at two or three days interval. On about four instances however, accused and Herminia Java had sex in the latter's house usually at 11:00 o'clock in the evening.

"Sometime on September 26, 1976, accused Eddie Grefiel had a drinking spree with Eulogio Batica, Guillermo Albarracin, Ernesto Ruste and Ponso Parado, at the house of Herminia Java. They started drinking tuba at about 8:00 o'clock in the morning. Herminia Java and her daughter were in the house but not Herminia's mother-in-law who was in the mountain then. Herminia would join in the drinking but would stand up when somebody would buy in the store. It was about noontime while Herminia Java was washing the glasses at the kitchen when the accused Eddie Grefiel told Herminia to go to the usual place at Daquittal's coconut plantation. She agreed and Eddie returned to the table where they were drinking. When Herminia Java was about to go out of the house, she made signs to Eddie that she was already going to the place. Eddie did not immediately follow Herminia but waited for about five minutes before standing up and made an excuse to the group that he was going home first. Eddie went to his house first and thereafter, proceeded to their usual meeting place. When he arrived Herminia Java was already there standing and he told her to remove her panty and lie on the coconut leaves. They then had sexual intercourse after which Eddie told Herminia to go ahead. Eddie went back to the house of Herminia a little while after Herminia. The group was still there in the house of Herminia and they continued to drink tuba. After consuming tuba on the container, Eddie Grefiel asked Herminia Java to give them another gallon of tuba which Herminia did and she joined them. It was about 1:00 o'clock in the afternoon when Eddie Grefiel went home from that drinking spree in the house of Herminia Java." (Brief, pp. 5-6.)

The appellant claims that:

"I. THE TRIAL COURT SERIOUSLY ERRED IN GIVING FULL FAITH AND CREDIT TO THE INCREDIBLE TESTIMONY OF COMPLAINANT, HERMINIA JAVA WHO IS HERSELF AN UNTRUTHFUL WITNESS:

"II. THE TRIAL COURT ERRED IN CON-VICTING THE ACCUSED-APPELLANT NOT ON THE STRENGTH OF THE PROSECUTION EVIDENCE BUT ON ALLEGED WEAKNESS OF THE DEFENSE; AND

"III. FINALLY, THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE

CRIME OF RAPE AND SENTENCING HIM TO SUFFER THE PENALTY OF RECLUSION PERPETUA."
(Brief, p. 1.)

The assignment of errors raises only one issue: which version is more credible?

In this jurisdiction and in other countries where the law has developed beyond the primitive stage, "It is a fundamental rule that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons, because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case." (People vs. Balili, L-38250, August 6, 1979, 92 SCRA 552, 560-561.) This case is covered by the fundamental rule; the appeal must be dismissed; and the judgment of the lower court must be affirmed.

The appellant questions Herminia's claim that she was raped in the coconut plantation of Remegia Daquittal. He says that the site of the alleged rape is near several houses, including Herminia's, and people pass it in going to their farms. But no less than the appellant in his own statement of facts says that the Daquittal coconut plantation was the venue of their first and other sexual encounters. This is what the appellant's brief says:

"These frequent visits of Eddie Grefiel have developed between him and Herminia Java an inti-macy that eventually the two ended as lovers. For the first time they consummated their carnal desire for each other in that coconut plantation of Remigia Daquittal located a few meters away from the house of Herminia. The place became the usual place of rendezvous for the two as several other meetings took place thereat at two or three days interval."

In the light of the foregoing, it passes understanding how the appellant can claim that the venue was unsuitable for the crime of rape.

The appellant's claim that he and Herminia were lovers is too crude to be convincing. As the trial court said:

"There is no doubt that the sexual inter-course was accomplished through force. The torn portions of the maternity dress (Exhibits "A-1" and "A-2") complainant was wearing at the time of the incident attest to said fact. Although no other physical evidence of force is shown on record other than the torn dress and of course the statement of the complainant to that effect, there is also no evidence satisfactorily belying the same."

The appellant asks why Herminia did not report the rape to her husband's brothers-in-law. Her explanation is reasonable; she said:

"ATTY DE VEYRA

Q And what happened when you returned to your house?

A I did nothing. I only changed my dress and I did not tell them because I was afraid they were all men and besides my mother-in-law was in the farm.

ATTY. DE VEYRA

The interpretation would be - I did not inform them because my mother-in-law was in the farm. They were drinking in the kitchen I just went up the house passing the sala and changed my dress. I did not say anything for fear that there might be a fight." (TSN, August 1, 1977, pp. 14-15.)

As a matter of fact, Herminia reported the rape to her mother-in-law as soon as the latter arrived home on the same day. This circumstance belies the appellant's claim that he was having an affair with Herminia.

The appellant also asks why she initially filed a complaint for attempted rape only. This was very well explained by her as follows:

"ATTY DE VEYRA

Q Now, Mrs. Java you stated that instead of filing a case of consummated rape you merely filed a case of attempted rape for the first time. Will you please tell us why you filed a case of attempted instead of consummated rape?

A First, it was very shameful and secondly, I was afraid my husband might not return any more especially that I was about to give birth.

Q When you filed a case for attempted rape where was your husband?

A He was in Manila.

Q Now, you also stated that you need the amendment of your first complaint from attempted rape to consummated rape. What were your reasons that made you amend your complaint from attempted rape to rape?

A I changed that attempted rape to rape because my husband interrogated me about that case.

Q And what did your husband say if you remember?

A He said to me, 'because you are my wife you tell me all the truth.'

Q Only that?

A Then I told him that the act was consummated.

Q What was the reaction of your husband, if any?

A He did not harm me because that was not my voluntary act.

Q When you went to the Municipal Judge of Marabut, Samar to amend the complaint, was your husband with you?

A Yes, sir.

Q You also stated on cross examination that you did not submit to a physician for examination. Why did you not submit?

A Because they only got a local midwife 'hilot' as I was about to have a miscarriage." (TSN, January 4, 1978, pp. 31-33.)

We have said that the findings and conclusions of the trial court should as a rule not be disturbed. The trial court's action is well-grounded. It said:

"It is quite difficult for the Court to believe that Herminia Java, a young married woman with two children, a second year commerce student of the Divine Word University, four months pregnant at the time of the incident would publicly disclose through the filing of the case, that she has been raped thus sully her honor and reputation in the community and undergo the trouble and humiliation of a trial if her motive was not to bring to justice the person who wronged her."

WHEREFORE, the decision and judgment under review being in accordance with both the evidence and the law, the latter is hereby affirmed in toto with costs against the appellant.

SO ORDERED.

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

Concepcion, Jr., J., on leave.

De Castro, J., on sick leave.

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