

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PONCIANO OYDOC, DEFENDANT-APPELLANT.*G.R. No. 61679. October 26, 1983*

Ponente: GUTIERREZ, JR., J.

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This is an appeal from the decision of the Court of First Instance of Baguio and Benguet, Branch III, at La Trinidad, Benguet, finding appellant Ponciano Oydoc guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, and to indemnify the offended party Jane Oydoc alias Jane Bangyod, the sum of TWELVE THOUSAND (P12,000.00) PESOS, and to pay the costs.

In a criminal complaint filed by complainant and offended party Jane Oydoc alias Jane Bangyod, dated June 18, 1979, appellant Ponciano Oydoc was charged with the crime of rape, as follows:

XXX XXX XXX

"That on or about the 28th day of April, 1979, at Sangilo Mines, Municipality of Itogon, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the said accused by means of force and intimidation, did then and there wilfully, unlawfully, and feloniously have a carnal knowledge with the undersigned complainant and offended party, against her will."

When arraigned on October 25, 1979, the accused-appellant entered a plea of not guilty. After due hearing, the trial court rendered the above-mentioned decision.

The prosecution's evidence which the lower court relied upon to make its finding of guilt beyond reasonable doubt is narrated in the People's brief, as follows:

"Complainant Jane Bangyod also known as Jane Oydoc resided with her mother, Emilia Oydoc, and stepfather, Ponciano Oydoc (herein appellant) at Sangilo Mines, Pico, La Trinidad. Appellant was the first cousin of complainant's father, the late Mauricio Bangyod. Their mothers were sisters. Complainant and the spouses Oydoc stay in one room of a bunkhouse (tsn., pp. 6-8, 19-20, 36, June 17, 1980; tsn., pp. 57, 64-65, September 11, 1980; tsn., p. 107, February 26, 1981).

"At around 10:00 o'clock in the morning of April 28, 1979, the then 14-year old complainant happened to be alone with appellant and a one-year old brother in the house. Her mother was on a business trip to Lepanto, Mankayan while her one-year old brother was in deep slumber. Their neighbor at the left portion of the bunkhouse, Roberto Colpe, was on vacation in Nueva Ecija (tsn., pp. 8-9, 17, 19-21, 36, July 17, 1980). Complainant was washing clothes at that time. She went inside their house to get more clothes to wash. Appellant, scantily clad in his brief, pulled her to the bed. Then he unceremoniously laid her down the bed, with her face up (tsn., pp. 8-9; 30, July 17, 1980). Complainant screamed for help only to find herself silenced by his right hand over her mouth. Appellant unzipped her brown pants (tsn., pp. 10-11, 25, July 17, 1980). Complainant struggled and held on to her pants but appellant brought out a more or less foot long knife and thrust it at the upper portion of her breast. Then he forcibly pulled her pants down, tearing the seams thereof

(Exhibits "A", "A-1" to "A-2"; tsn., pp. 11-15, July 17, 1980; tsn., pp. 75-76, November 19, 1980) and divested complainant of her panty (tsn., pp. 12-13, Ibid). Complainant struggled but appellant menacingly poked the knife on her heart. She shuddered in horror. She was not able to shout or make a sound. Her efforts to move and shout were futile. Appellant had his legs in between the eagle-spread legs of complainant. While on top of her, both hands of the victim were pressed down at the back while the forearms were held by the left hand and the right hand was pressed down by the right hand of the accused, holding the knife (tsn., pp. 11, 13, 31, Ibid). Appellant pulled his brief down and inserted his hardened penis inside the vagina of complainant (tsn., pp. 29-32, Ibid). Thus, he succeeded in consummating his carnal desires on her (tsn., p. 29, Ibid). After satisfying his bestial instincts, appellant threatened to kill her and all her brothers and sisters should she tell her mother of what had happened to her. Thereafter, he hurriedly left (tsn., pp. 41-42, Ibid; tsn., pp. 74-75, November 19, 1980). Complainant felt pain in her private organ and saw blood flowing therefrom. She touched her vagina and her hand was smeared with blood (tsn., p. 16, July 17, 1980). She picked up her brown pants and wiped her vagina with it. She saw the whitish substance therein which she believed to be appellant's semen (tsn., p. 15, July 17, 1980).

"Appellant had earlier ravished her twice on different occasions. The first time was when her mother went to Baguio to buy food stuffs while the second time was when she went to the Kaingin (tsn., p. 39, July 17, 1980). She tried to divulge to her mother everything appellant did but she never had the chance. Appellant was continuously watching her. His threat of death to her and other members of the family stilled her tongue (tsn., pp. 40-42, July 17, 1980).

"It was only on May 1, 1979 or 2 days later, after appellant left for work that complainant took the chance to see her aunt, Marciana Luken, at Acupan, Itogon and confided to her and Erlinda Dicang that appellant had raped her thrice. It took her sometime from the first sexual assault to reveal the outrage because of the continuing threat made by appellant. Everyday, since the first sexual abuse, appellant threat-ened to kill her. In fact, complainant became virtually a prisoner in their own house. Appellant did not even allow her to go out nor to go to school for apprehension that she might reveal his dastardly crime to other people. Complainant was in the sixth grade then (tsn., pp. 24, 38-42, July 17, 1980, tsn., pp. 51-52, 63, September 11, 1980; tsn., pp. 70 & 73, November 19, 1980). With complainant, Marciana Luken and Erlinda Dicang immediately proceeded to Baguio City and consulted a relative. There was a family council presided over by complainant's grandfather at Sabangan and they reached the consensus to file a criminal complaint against appellant because 'what he did was wrong.' Even appellant's own father agreed to the filing of criminal charges for rape against him (tsn., pp. 53, 65-66, September 11, 1980; tsn., p. 70, November 19, 1980). They reported the incident to the police authorities at Binanga and their sworn statements were taken down. Complainant signed a complaint for rape against appellant (Exhibits "B" & "C"; tsn., pp. 46-47, 53-55, September 11, 1980). Accompanied by Engracia Dongael, complainant went to the Baguio General Hospital and had herself medically examined by Dr. Anecito Macam (tsn., p. 21, July 17, 1980; Exhibit "D"; tsn., pp. 70-71, November 19, 1980; tsn., pp. 84-85, January 15, 1981). The examining physician found that there were 'old healed lacerations' in her vagina at the one, five, nine and eleven o'clock positions. Her tight vagina admitted the examiner's one finger. The doctor concluded that complainant had lost her virginity more than ten (10) days before the examination (tsn., pp. 85-86, 89-90, January 15, 1981)."

The accused-appellant raised the following assignment of error in this appeal:

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED OF THE CRIME OF RAPE CONSIDERING THE PRESENCE OF THE ELEMENT OF CONSENT.

The appellant admits having had carnal knowledge of the offended party thrice sometime in March and April, 1979 but denies using force. According to him, the complainant consented to his proposal to sleep with him and perform sexual intercourse. He cites the following circumstances to support his contention that there was consent:

"1. The non-prosecution of the accused for the first two acts of sexual intercourse committed by him against

the aggrieved party. This circumstance gives rise to the assumption that the investigating officers found no probable cause or prima facie evidence to the commission of the crime of rape from previous acts of sexual intercourse, which casts reasonable doubt as to the veracity of the existence of force as an element of rape in the subsequent third sexual intercourse.

"2. The failure of the aggrieved party in telling her mother about the three sexual intercourse committed within the span of two months. The normal conduct or behaviour and reaction of a child who suffered injury is to run immediately to the mother for comfort and help.

"3. The choice of the aggrieved party to confess the incident to her aunts instead of her mother with whom she lives is doubtful. This is an indication of a feeling of guilt and shame for having illicit relation with her mother's husband such that her shame made her turn to her aunts in remorse, probably just to discontinue or refrain from further relations with her stepfather.

"4. The supplanted narration by the aggrieved party of the use by the accused of a knife which was absent in her original affidavit or statement. Logic suggests the explanation that the aggrieved party had been subsequently coached by knowledgeable persons who realized that her original statement did not contain an averment of sufficient force used by the accused in order to satisfy the requirement to sustain a conviction for rape.

"5. The fabrication of evidence in the form of torn pants with false semen stains."

With respect to the first contention of the appellant, we agree with the Solicitor-General that the non-prosecution of the two previous sexual assaults committed against the complainant does not affect her credibility. Said circumstance instead remonstrates the sexual perversity of the appellant. The error committed by police officers relative to the number of charges to be instituted against him is not attributable to the complainant.

Regarding the second and third theories presented by the appellant, the Solicitor-General maintains that the victim did not reveal first to her mother the grievous outrage committed against her because she was afraid that appellant would make good his threat to kill her and members of their family. There is the circumstance that the appellant is the complainant's stepfather. Jane Oydok, only 14 years old had special problems reporting to her mother, the rape and the threats of the latter's own husband. The threats were made everyday from the first sexual assault. Furthermore, the appellant kept her closely guarded that she never had the opportunity of talking with her mother. She was not allowed to leave the bunkhouse nor go to school. It was only when the appellant left for the mines that the complainant was emboldened to go to Acupan, Itogon and report the outrage committed against her.

One should not expect a fourteen-year old girl to act like an adult or mature and experienced woman who would know what to do under such difficult circumstances and who would have the courage and intelligence to disregard a threat on her life and the members of her family and complain immediately that she had been forcibly deflowered. It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapists' threat on their lives, more so when the rapist is the child's own stepfather living with her.

Concerning the fourth argument of the appellant, that the complainant testified that when she was holding on to her parts, the appellant brought out a knife and poked the same on her breast but she did not say so in her original affidavit, we see no error in the lower court's appreciating the testimony given before it. By their very nature, there can be no exact congruence between the affidavit in support of the complaint for rape and the testimony given during the trial on the merits. The latter is necessarily more extensive because the witness is exposed to questions propounded not only in direct but also in cross-examination and by the court as well. The complainant appended an explanation as to why the police investigator omitted the portion about a knife. The affidavit was prepared in English not in the dialect with which the complainant is well-versed and acquainted. Generally, an affidavit is not prepared by the affiant himself and could contain certain inaccuracies in the typist's or

interrogator's interpretations of the affiant's declarations.

As to the negative findings of the crime laboratory relative to the stains in the complainant's torn brown pants submitted for examination, the Solicitor-General argues that the absence of spermatozoa in the stains found on the pants submitted for chemical analysis after the lapse of time from the date of the rape is no obstacle to hold that rape has been committed because it is of judicial notice that spermatozoa have one of the shortest spans of life among living things.

We find the stand of the Solicitor-General to be well-taken. We find no reason from the records and the appellant's arguments to reverse the trial court's factual findings and its appreciation of the credibility of witnesses. Appellant's contention of consent is unworthy of credence. He failed to give convincing evidence of amorous relationships between him and the complainant as to lead her to have voluntary sexual intercourse with her own stepfather who is incidentally a first cousin of her late father. (*People v. Beso, Jr.*, 117 SCRA 299). The complainant's failure to disclose to her mother the details of her defoliation should be viewed in the light of the mental shock and trauma that must have overwhelmed her. (*People v. Santos*, 94 SCRA 277).

Furthermore, the complainant, a young girl who was still possessed of the traditional and proverbial modesty of the Filipina, would not have filed a complaint for rape and suffered the torment if not the ignominy of having to testify in a court of justice about the wrong done to her by her stepfather, if in truth she was not really raped. (*People v. Sacabin*, 57 SCRA 707; *People v. Ignacio*, 60 SCRA 11; *People v. Tejada*, 107 SCRA 176; *People v. Tampus*, 88 SCRA 217).

The lone assignment of error which is premised on consent has no merit.

WHEREFORE, the trial court's judgment is AFFIRMED.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

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