

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MONIR AKBARI, DEFENDANT-APPELLANT.

G.R. No. 61686. March 12, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Monir Akbari appeals from the Decision of the Court of First Instance of Davao finding him guilty of Rape and sentencing him to suffer reclusion perpetua, to indemnify the offended woman, Epifania Arboleda, in the sum of Ten Thousand Pesos (P10,000.00) without subsidiary imprisonment in case of insolvency, and to pay the costs.

The prosecution evidence is summarized in the People's Brief, as follows:

"Complainant Epifania Arboleda, 47 years of age, and her husband, Santos Arboleda, were living in an iso-lated house located in Barrio Hijo, Municipality of Maco, Davao Province, with their two grandchildren, aged 6 and 7 years. Their nearest neighbors were a kilometer away. (t.s.n., p. 19, July 21, 1980).

Preparing to attend a procession in veneration of the Sto. Nino half a kilometer away, complainant woke up at 2:00 a.m. of June 16, 1979. The dogs suddenly started barking warning her of the presence of some persons around the house. Peeping out of the window, she saw four men outside, one of whom she immediately recognized as her neighbor, accused-appellant Monir Akbari. The four men were wearing masks over their faces. (t.s.n., pp. 4-5, July 21, 1980; p. 4, Nov. 18, 1980).

The intruders shouted to the couple to bring down the goats and nothing will happen to them. Awakened by the noise, complainant's husband, Santos Arboleda, who was convalescing from rheumatic attacks, asked his wife what they ought to do. Complainant replied that they should bring down the goats as ordered. (t.s.n., pp. 5-6, July 21, 1980; p. 4, Nov. 18, 1980).

When the couple went down bringing the goats, two of the men poked their guns at Santos' sides and ordered him to give them money. Santos told them that they did not have any and the men ordered the couple to return to their house. Before going up, the intruders fired two shots. Still being covered by the guns of the two men, Santos went up and was ordered to sit on a bench in the kitchen. The other two men, with guns pointed at the complainant, dragged her, to an adjoining room. Once inside the room, they pushed her down, took off her skirt, blouse and panty until she was completely naked. One of the men pinned down complainant's arms to the floor, while the other took off his pants and placed himself on top of her. Initially, complainant struggled and resisted the assault. But when the men threatened to kill her unless she submits to their wishes, she kept still, resigned to endure whatever the men intended to do with her. After one of the men had satisfied his carnal lust on her, he changed places with the other who then ravished her. After the two men were through, they approached Santos and took over the task of guarding him while their two other companions also took turns in raping complainant, in the same manner as the first two had done. They stopped after each of them had carnal knowledge of her twice. Before leaving, the men threatened to kill them if the incident is re-reported to the police.

The couple thought it wise to keep the dishonor to themselves lest harm befall them, and the matter would not

have been reported were it not for an incident which occurred sometime in September 1979 (tsn., pp. 6-16, July 21, 1980). About three in the afternoon, Juan Toring, the son-in-law of complainant, went to the store of a certain Dino in Lupon-lupon, Maco, Davao Province and met appellant there. The latter, who was drinking heavily, told Toring that he (appellant), Cesar Lloren, Buddy Sayong and Angelito Mancao took turns in having carnal knowledge with Epifania Arboleda and that it was enjoyable having sex with an older woman. Upon hearing this, Toring relayed the matter to his mother-in-law. This information given by her son-in-law prompted complainant to report the incident to the police authorities on October 5, 1979. At that time, all the suspects had disappeared with the exception of appellant Monir Akbari who was forthwith arrested and indicted of the instant charge. Both complainant and her husband gave sworn statements before the police. (tsn., pp. 18-19, November 18, 1980, Exhs. '1' and '2')."

On the other hand, appellant Monir Akbari, 21 years old at the time of the incident, single, resident of Hijo, Maco, Davao, negated having violated the person of Epifania Arboleda, denied having said anything about the incident to Toring in the store, and contended that complainant is mentally abnormal and of ill repute in their community. Appellant's employer, Guillermo Bio, declared that Monir was a good man and that they both slept next to the copra dryer watching the drying the night that the alleged crime took place. To prove that appellant was not certain of appellant's identity, defense witness Ali Sam testified that when Epifania complained to him about the incident in August, 1979, she mentioned the names of only the three who had abused her but not appellant's name.

The Court *a quo* found the defense posture unworthy of credence and, as aforesaid, convicted appellant.

Appellant now claims that the Trial Court erred in holding a) that "the court harbors no doubt whatsoever that the event narrated by the complainant and her husband on the witness stand actually occurred at the place, date and time specified by them"; b) that "his identification by the complainant as one of those who raped her should be considered in conjunction with the testimony of Juan Toring that accused Monir Akbari, in an unguarded moment, confessed to him that he (Akbari) was one of those who raped the herein complainant"; and c) in convicting him.

The first error assigned takes issue with the following findings of the Court *a quo*:

"The court harbors no doubt whatsoever that the event narrated by the complainant and her husband on the witness stand actually occurred at the place, date and time specified by them. The threats of the male-factors to return and kill Epifania and Santos were not to be taken lightly considering that the two had a foretaste of what the accused and his companions were capable of committing. The desire to live under any condition is the most compelling of man's instincts. Fear of death distorts one's judgment, depriving him of rational decision, making him act or react to a situation in a manner that is ridiculous or downright foolish to one in full possession of his faculties. In addition, considered with the degree of education, the social station and the nervous disposition of the complainant and her husband, their failure to report the incident in question for several months does not appear incredulous to the extent that it should be counted against their truthfulness."

We find no error in the conclusion thus reached. The fact that complainant and her husband reported the incident to the police only about four months later does not detract from their credibility. They explained that they had been warned not to report to the authorities and that they feared for their lives so that they thought it best to suffer the harrowing experience in silence. The fear for their lives was real for they decided to "evacuate" and move to another house.[1] Besides, even in the absence of a formal report, complainant did mention the incident to Ali Sam, a defense witness, in August, 1979, as the latter himself had testified. She had also disclosed it at a prayer meeting where the leader stated that help is given to those who share their problems with the flock.[2] The evidence discloses that the couple was unlettered and simple-minded. The husband was 60 years old, sickly, hard of hearing, and could not understand Tagalog very well.[3] He just cried when complainant had told him of the carnal attack and regretted that he was sickly.[4] Neither was he in a position to give succor to his wife because

two of the four culprits were guarding him with firearms by the table outside the room where his wife was being taken advantage of.[5] Complainant was fanatically and blindly religious and just relied on God to save her from danger.[6] She begged for mercy from the malefactors because she had just recovered from hemorrhage, but her pleas were unheeded. She resigned herself to being ravished and just prayed realizing that she was powerless to do anything in the face of threats on her life by the four abusers. The couple would have kept the dishonor and disgrace to themselves if appellant had not divulged and bragged about the matter publicly within the hearing of complainant's son-in-law.

As the Trial Court had observed:

As long as the indignities they suffered remained known to the couple only and were unknown to the rest of the family, most especially to their son-in-law and his wife, Epifania and Santos were disposed to suffer in silence. When the matter was divulged to the public by a culprit, to the extent that their son-in-law was openly confronted with it, the couple painfully came to the conclusion that it was time to report the incident to the police if only to salvage the few shreds of dignity left in them.

The defense makes much of complainant's answer to a question posed by defense counsel that she had experienced orgasm.

"Q. Of course, when these persons have sexual inter-course with you, you experienced orgasm?

"A. Yes, sir."[7]

It is doubtful, however, that complainant, unlettered as she was, could have understood the term. For, she also testified:

"Q. What did you feel when the first person had sexual intercourse with you?

"A. I was already scared because my husband was also scared.

"Q. Of course, you also enjoyed having sexual intercourse with them?

"A. I did not enjoy, I even thought I will die at that time."[8]

When pressed by defense counsel further, she replied:

"Q. Also at that time when Monir Akbari had inter-course with you, you had also orgasm?

"A. I already lost consciousness."[9]

Insofar as her moral character is concerned, complainant admitted that she had previously filed a charge for rape against one Cario Sam but that it did not prosper because her husband was convinced to withdraw the complaint.[10] That happening, however, did not make complainant a woman of ill repute as appellant alleges. The other attacks on her character and mental stability were considered by the trial Judge as "tenuous and fictitious to deserve serious consideration." Besides, even granting complainant's unchaste character, that is no defense in a charge of rape provided that the illicit relations were committed with force and violence.[11]

The second assigned error has to do with complainant's identification of appellant. Of this, there can be no doubt. She testified that she recognized his voice and his face.

"FISCAL SOLEDAD:

"Q. How were you able to recognize Monir Akbari as one of those who raped you?

"A I recognized his voice because he even went to our house to ask salt and sometimes he ate there.

"COURT:

"Q. Why you recognized only his voice?

"A. We were one time neighbors and he even decided one time to live with us.

"Q. Yes, why is it that you did not recognize his face?

"A. I recognized his face also, Your Honor.

"Q. You said you only recognized his voice?

"A. I also recognized his face. (t.s.n., p. 18, July 21, 1980)."[12]

That complainant did recognize appellant also appears in her statements before Municipal Judge Montano and policeman Villarosa. Complainant's husband also testified that he recognized only the appellant that evening.

"Q. Now, did you recognize any of those 4 persons?

"A. I only recognized one.

"Q. Who?

"A. Monir."

x x x x x x x x

"Q. Were you inside the house when they took turns in having sexual intercourse?

"A. I was already upstairs when they took turns.

"Q. How many of them took turns?

"A. Four of them

"Q. And who of four did you recognize?

"A. Monir.

"Q. You are referring to Monir when his shoulders you touched a while ago?

"A. Yes, sir."[13]

But even assuming that the identification by the couple was not reasonably certain, as the defense contends, Juan Turing's disclosure that in an unguarded moment under the influence of liquor appellant had divulged the incident and the names of his three companions corroborates the identification made by the couple. The Trial Court, therefore, did not err in concluding:

"The identification of Monir Akbari by the complainant as one of those who raped her should be considered in conjunction with the testimony of Juan Turing that accused Monir Akbari, in an unguarded moment, confessed to him that he (Akbari) was one of those who raped the herein complainant. That accused Monir Akbari revealed that fact to Juan Turing is not open to doubts if one considers the events that swiftly followed it, i.e., the immediate action taken by the complainant and her husband in filing the corresponding complaint and executing the supporting affidavits that initiated the prosecution of the present case and the flight by the other persons identified by Monir Akbari to have participated in the commission of the offense.

Taken together, i.e., the identification of accused Monir Akbari by the complainant and the admission of said complainant that he was one of those who raped her, leaves no room for doubt that he indeed committed the crime

of rape herein charged."

The variance or contradictions in the testimony of complainant pointed-out by the defense refer merely to peripheral details that do not affect the substance of their statements.

In the final analysis, the basic issue focuses on the credibility of the contending witnesses and we hold that the findings and conclusions of the trial Judge with respect thereto are justified upon review of the evidence. The records do not show anything of substance that could justify a reversal.

WHEREFORE, the appealed judgment is hereby affirmed, with costs against appellant Monir Akbari. SO ORDERED.

Plana, Relova, Gutierrez, Jr. and de la Fuente, JJ., concur.

Teehankee, J., (Chairman), on official leave.

[1] T.s.n., July 21, 1980, pp. 22-23.

[2] T.s.n., *ibid.*, p. 16.

[3] T.s.n., November 18, 1980, pp. 5; 9.

[4] T.s.n., July 21, 1980, p. 27.

[5] T.s.n., November 18, 1980, p. 6.

[6] T.s.n., July 21, 1980, pp. 4; 11.

[7] T.s.n., *ibid.*, p. 25.

[8] T.s.n., *ibid.*, p. 24.

[9] T.s.n., *ibid.*, p. 25.

[10] T.s.n., *ibid.*, pp. 23-24.

[11] *People vs. Blance*, 45 Phil. 113 (1923).

[12] pp. 10-11, Appellee's Brief.

[13] T.s.n., November 18, 1980, pp. 5; 6.

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