

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER FELICIANO, DEFENDANT-APPELLANT.

G.R. No. 62712. March 11, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

In Criminal Case No. SM-801 of the Court of First Instance of Bulacan, Fifth Judicial District (now Third Judicial Region), Branch V, the accused Roger Feliciano was charged with the crime of rape under Art. 335 of the Revised Penal Code, with the attendance of nocturnity and grave abuse of confidence as aggravating circumstances, in an information which reads:

"That on or about the 19th day of September, 1975, in the municipality of Norzagaray, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Roger Feliciano y Manuel, hit complaining-witness Leoncia Villarama on the stomach rendering her unconscious and with lewd design, did than and there wilfully, unlawfully and feloniously have carnal knowledge of the said complaining-witness Leoncia Villarama, against her will.

"That in the commission of this crime the aggravating circumstances of nocturnity and grave abuse of confidence were present.

"Contrary to law." (p. 3, Rollo)

After trial, the court a quo rendered judgment[1] on March 23, 1982, disposing as follows:

"WHEREFORE, the Court finds accused Roger Feliciano y Manuel guilty of the crime of rape beyond reasonable doubt, and hereby sentences him to reclusion perpetua or life imprisonment, with the accessory penalty of indemnifying the offended party Leoncia Villarama in the amount of P3,000.00 as moral damages, and of paying the costs.

"SO ORDERED." (p. 17, Rollo)

Hence, this appeal on the following assigned errors:

"I

"IN CONCLUDING THAT RAPE WAS COMMITTED DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE ELEMENTS THEREOF BEYOND A REASONABLE DOUBT, BECAUSE IT WAS NOT SHOWN THAT THE ACCUSED HAS SEXUAL INTERCOURSE WITH THE COMPLAINANT;

"II

"IN NOT HOLDING THAT, EVEN ON THE ASSUMPTION THAT THERE WAS CARNAL KNOWLEDGE, THE SAME WAS NOT ATTENDED BY FORCE, VIOLENCE, OR INTIMIDATION.

"III

"IN NOT GIVING PROBATIVE VALUE TO THE UNEXPLAINED DELAY OF THE COMPLAINANT IN DENOUNCING THE ACCUSED FOR THE ALLEGED RAPE." (p. 63, Rollo)

Accused, having posted bail, has been on provisional liberty.

The antecedent facts of the case are as follows:

On September 19, 1975, at about 1:00 A.M. private complainant Leoncia "Luz" Villarama, dressed in a blouse, skirt, panty and bra, was asleep on bamboo bed (papag) behind a curtain in a tailor shop (located at Bigte, Norzagaray, Bulacan) owned by her uncle, Roger Feliciano. She was awakened when the accused laid his whole body on top of her. When she shouted, the accused covered her mouth and delivered a fist blow on her stomach that rendered her unconscious (TSN, July 6, 1977, pp. 12, 14 and 18).

When private complainant regained consciousness, she felt pain in her vagina and found that her panty had been pulled to the middle portion of her thighs. She touched with her hand where the pain was and came in contact with something sticky on her vagina. She dabbed that sticky matter with her hand on her skirt. Later, she discovered that the sticky thing was blood (Id., p. 19).

Realizing that the accused had sexually taken advantage of her, the private complainant cried, pulled up her panty, deprecated the accused and remarked that being her uncle, the accused should have been the one to protect her instead of abusing her. The accused disclaimed the kinship, stating that it was his wife, Nemesia, who is related to the private complainant. He told her to stop crying as it would not solve the situation and besides, if his wife would learn about the incident, "it would only cause trouble to the family." The accused then went to sleep. The private complainant, however, continued crying.

Later in the morning, the accused threatened the private complainant: "Your aunt will soon arrive; do not complain to her; do not report to her; for if you do, I will kill you." (TSN, July 6, 1977, p. 24) The private complainant therefore, kept silent. The following day, September 20, 1975, she went home to Bigte, Angat, Bulacan (Id., p. 25). Afraid that her father would take rash action, she decided not to report the incident. Instead, she left a note for her father (in the pocket of his polo shirt) and left for Manila (Id., pp. 26-27). She proceeded to the place of her former employment (located in front of U.S.T) and spent the night with her friend, Noli Sicat. The next morning, she went to her cousin's place in Grace Park. She and her younger sister who was there, called up, and thereafter, went to their aunt's (Erlinda Villamayor) place in Pandacan, where she narrated the rape incident in her sister's presence. Afterwards, her father, who had been informed of her whereabouts, arrived and brought her to Camp Crame to complain about the incident (Id., p. 30). She subsequently filed a criminal complaint for rape against the accused in the Municipal Court of Norzagaray, Bulacan (Exhs. A and A--1).

The NBI Medico-Legal Officer, Dr. Rodolfo Lezondra, testified on his examination of "Luz" (the offended party's nickname, TSN, June 14, 1976, pp. 5-6) Villarama on September 25, 1975 and declared that "the subject's genital examination showed a superficial healing laceration of her hymen at 6:00 o'clock position," explaining that the "laceration did not extend beyond the imaginary midpoint of the width of the hymen." (Id., p.11).

Living Case Report No. 75-707 (Exh. B) contains these material findings:

"The said Living Case Report (Exh. B) contains these material findings: As to General Physical Examination, the report states: 'no evident sign of extragenital physical injury noted on the body of the subject.' On the Genital examination, the findings are:

'Pubic hairs, fully grown and moderate, Labia majora and menora, both gaping. Fourchette, moderately tense. Vestibular mucosa, pinkish. Hymen, moderately thick, moderately wide, distensible with superficial healing laceration, superimposed over a notch at 6:00 o'clock position corresponding to the face of a watch, edges congested. Hymenal orifice, originally annular and admits a tube 2.8 cm. in diameter with moderate resistance.

Rugosities, prominent and vaginal walls, moderately tight.'

"The conclusions contained in the report read:

'1.

No evident sign of extragenital physical injury noted on the body of the subject.

2.

'Genital findings present compatible with sexual intercourse with man on or about the alleged date of commission.'" (pp. 7-8, Rollo)

The Court finds that the guilt of the accused has been established.

The defense did not controvert the private complainant's testimony, i.e., that she woke up to find the accused on top of her and, as the Solicitor General pointed out, "a position where, in the first place he had no right to be." (p. 129, Rollo) When the private complainant shouted (TSN, July 6, 1977, p. 14), Feliciano delivered a hard blow to her belly (Id., p. 17) which rendered her unconscious and therefore did not allow her to "see and even feel, the precise moment that Feliciano insert his penis into her private part."

As the Solicitor General pointed out:

"x x x. The positive unequivocal identification of the appellant by the victim as the man who lay on top of her on the date of the incident and who hit her on the stomach with such force that made her unconscious is direct, not circumstantial evidence. Considered with all the other corroborative evidence, as the blood found on victim's vagina, the pain she suffered in her private parts, her panties pulled down to her thighs plus the medical findings, all taken together, affirm the victim's accusation against the appellant.

"Moreover, the entire testimony of the victim is marked by sincerity and candor. No ulterior, ill, false or wrong motive, may be deduced or inferred from her accusation that the appellant raped her. It is worth reiterating the trial court's findings that:

'Indeed, complainant would (not) have gone into the trouble of making her sexual experience (which she charged accused with being responsible for) the subject of gossip and slander in her entire community, of exposing her vagina before the scrutinizing eyes of NBI medico-legal officers, of baring herself naked for photographs to be taken of her, of presenting herself on the witness stand during trial to be subjected to humiliating or embarrassing questions from the defense, of making herself the cause of a serious rift in the familial relations between her and her aunt (wife of accused), as well as between her father and her (said) aunt, and among her uncles, aunts, and other relatives, etc. -- if her charge were not true and if she were not motivated solely by the desire of seeing accused punished for his offense.'" (pp. 131-132, Rollo)

On alleged inconsistencies in the private complainant's testimony, i.e., a) on one hand, that she was raped on September 19, 1975 and in one instance, that she had not had sexual intercourse prior to September 21, 1975; or b) that in her testimony, rape was committed on September 18, 1975, but in "Exh. B," she informed Dr. Lezondra that it was September 19, 1975, thereby casting doubt on the veracity of her claim, this Court has ruled that inconsistencies as to the date of rape is understandable. "A rape victim is not expected to keep an accurate account of the traumatic and horrifying experience, she went through x x x inconsistencies and contradictions referring to minor details do not destroy the credibility of the witness." (People v. Juan P. David, G.R. Nos. 72355-59, September 15, 1989, 177 SCRA 551; People v. Jamandron, G.R. Nos. 80226-27, October 13, 1989, 178 SCRA 474).

Moreover, the Solicitor General has pointed out that the alleged inconsistency was brought out on cross-examination, which however was corrected during the offended party's re-direct testimony. Thus,

"Fiscal:

"Q.

On September 21, 1975, was there any unusual incident that occurred?

"Atty. Gunigundo: [defense counsel]

I will object, Your Honor. There is no point in the cross-examination which is being redirected by the question Your Honor, and besides it will be immaterial whether or not there was something unusual that occurred on September 21, because that was not covered by the information.

"Court:

But counsel, the information say on or about.

"Atty. Gunigundo:

Yes, Your Honor. Even then, we respectfully submit that the question is improper for re-direct, Your Honor, because there is no mention by this witness of any unusual incident on September 21, 1975 in the cross-examination.

"Court:

The information alleges that the date is on or about. The prosecution is entitled to clarify.

"Atty. Gunigundo:

I withdraw the objection then, your Honor.

"A:

There was, sir, it was on the 19th of September, sir.

"Atty. Gunigundo:

Just a moment, Your Honor. May I request that the first answer of this witness be reflected 'there was, sir.'

"Court:

There was, but that was on the 19th. Proceed.

"Fiscal:

What was that unusual incident that occurred on the 19th?

x x x

"A:

I was raped, sir.

"Fiscal:

"Q:

Who raped you?

"Atty. Gunigundo:

May we have the word 'ginahasa' be reflected on the record.

"Court:

Include the word 'ginahasa.'

"A:

Roger Feliciano, sir.

"Fiscal:

"Q:

Of what year on September 19 were you allegedly raped by Roger Feliciano?

"A:

1975, sir.

"Q:

What time, more or less, of that date were you allegedly raped by Roger Feliciano?

"A:

I cannot be sure about the exact time, but perhaps around 1:00 o'clock midnight.' (pp. 1013, tsn., October 17, 1977, Luz Villarama) (Underscoring supplied)." (pp. 11-13, Brief for the Appellant; pp. 133-135, Rollo)

As a barrio lass, the offended party could not anticipate the consequences and/or implications of her response: "Not yet, sir" (TSN, October 17, 1977, p. 42) to the defense' question of whether or not she had any sexual intercourse "prior to September 21, 1975." Certainly, her response could also refer to that period "after September 19, 1975 but prior to September 21, 1975." This recourse to hair-splitting analogy only exposes a desperate attempt to becloud the factual circumstance that the victim was raped. Again, the Solicitor General aptly pointed out:

"x x x The appellant does engage in too much ado over the dates, which, as shown, is settled. Nor is the too much ado developed by the appellant on the alleged lack of proof on intercourse, a really genuine issue. It is, in essence, one of technicality over substance. But as shown above, the substance is that the evidence supports the rape by the appellant of the victim, and the hairsplitting being done by the appellant is much ado over nothing." (pp. 14-15, Brief for the Appellant; pp. 136, Rollo)

The defense has also decried the trial court's failure to appreciate the absence of "force, violence and intimidation," assuming there was carnal knowledge.

It has been duly proved that the private complainant was rendered unconscious due to the fist blow to her stomach delivered by the accused, which necessarily would not cause any contusion or open injury. "[T]he absence of any sign of force on the victim's vagina, abdomen and lower extremities do(es) not negate the crime of rape. For rape to be committed, it is not necessary that there be marks of physical violence present on the victim's body." (People v. Cruz, G.R. No. 69251, September 13, 1989, 177 SCRA 451).

As to the alleged delay in reporting the incident, it would be recalled that the accused threatened to kill complainant should she report the incident to her Aunt Nemesia (accused's wife). This explains why she did not immediately denounce the accused to her aunt, who was the very first person she saw later that morning. "(The) failure (of the victim) to disclose her defilement without loss of time to persons close to her and to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested, and that the charges against the accused are all baseless, untrue and fabricated." (People v. Hortillano, G.R. No. 71116, September 19, 1989, 177 SCRA 729; People v. David, *supra*; People v. Natan y Callejo, G.R. No. 86640; January 25, 1991).

Likewise, private complainant's failure to report the incident to her father, the person closest to her, was also due to the fact that accused, who exercised moral ascendancy over her, had warned her that the incident would "only cause trouble to her family." Being employed as seamstress in accused's tailor shop, it is easy to surmise that complainant initially feared the rift that would arise between her family and the accused and the possible loss of her job. As the Solicitor General explained it:

"It will be remembered that complainant lived with accused and his wife when she was small girl; and it was from them that learned how to sew; and because she wanted to pursue further studies in this field, especially the art of master cutting, she returned to her parents. But, about three months before the incident in question, the spouses got complainant to live with them again, but this time employing her as a seamstress in accused's tailor shop.

"Now, being the husband of her aunt, and therefore her uncle, albeit by affinity, accused certainly had and could exercise some degree of moral influence over her. Because complainant lived with accused and his wife when she was a small girl, it is reasonable to assume that complainant regarded the spouses -- at least prior to the incident in question -- as her second parents. With this background in mind, it is now easy to understand why complainant did not report the incident to the neighbors beside the tailor shop, nor to the police outpost nearby. In fact, complainant did not even report the same to her parents; it was only after she was fetched from her aunt's house in Pandacan, Manila that she revealed everything to her aunts and other relatives (pp. 10-11, Decision." (p. 17, Brief for the Appellant; p. 139, Rollo)

The Court finds the judgment of conviction fully in accord with the evidence. However, the compensatory damages payable to the private complainant is increased from P3,000.00 to P40,000.00.

ACCORDINGLY, the appealed decision, as MODIFIED, is hereby AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[1] The judgment was rendered by the Hon. Jesus Elbinias, now Associate Justice, Court of Appeals.

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