

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO ISON @ DANNY, DEFENDANT-APPELLANT.*G.R. No. 62806. May 05, 1989*

Ponente: MELENCIO-HERRERA, J.

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At the instance of the offended party, Leonila P. Santiago, who filed the corresponding criminal complaint before the Municipal Court of Echague, Isabela, the Accused Danilo Ison was charged with Rape committed in an uninhabited place and with grave abuse of confidence.

The evidence for the prosecution sought to establish that Complainant, Leonila P. Santiago, was a 13-year old girl on 17 April 1979, who, with her widowed mother, Cresencia Paynor Santiago, were residents of Lambaken, Jaen, Nueva Ecija. They had relatives in Roxas, Isabela, namely, Mr. and Mrs. Florencio Antolin and Alex Bautista, a brother-in-law of Cresencia. Cresencia also had a brother in Echague, Isabela, by the name of Florencio Paynor. After the school term, Leonila usually went to Roxas, Isabela, at her uncle Alex Bautista's place to spend her vacation.

On 17 April 1979, Complaint hitched a ride in the jeep of the Accused to go to Roxas, Isabela, to spend the summer vacation. The Accused was actually a distant uncle, being a third degree cousin of Complainant's mother. He was a businessman, who usually made trips to Roxas, Isabela with his helper, Alfredo Lozada, to deliver eggs for sale. The group left Lambaken, Jaen, at about 4:30 in the afternoon with the three of them sitting on the front seat of the jeep. Complainant was seated between the two men because the back of the jeep was filled with egg boxes.

Upon reaching the diversion road at Echague, Isabela near the Echague cemetery, the Accused told Complainant that they would spend the night there. They slept in the jeep, the Accused lying down on the front seat behind the steering wheel while Leonila slept in a sitting position at the other end of the front seat. The legs of the Accused dangled outside the jeep.

While Complainant was thus asleep, she was awakened when she felt someone, who turned out to be the Accused, holding her hands. Complainant struggled and fought to free herself when the Accused started embracing her. She cried for help from Al, who happened to be at the back of the front seat, but instead of helping her, Al assisted the accused by holding her hands. Suddenly, the Accused gave Complainant a fist blow in the abdomen, which rendered her unconscious. She later regained consciousness when she felt pain in her private part as the Accused succeeded violating her. She noticed that her pants and panty were already removed and she was in a lying position on the front seat with her left leg hanging from the seat and the Accused was on top of her doing the push-and-pull movement. Complainant was shocked and cried for help but none was forthcoming. The act consummated, the Accused threw her pants and torn panty at her and threatened her not to make any revelation otherwise he would kill her and her mother.

Soon thereafter they proceeded to Roxas arriving thereat at about 6:30 in the morning at her uncle Antolin's place.

Immediately, Complainant mailed a letter to her mother (Exhibit "B") narrating the offense on her person. She did not disclose the incident to her uncle because of the threats made to her by the Accused.

Cresencia Santiago, Complainant's mother, received her daughter's letter on 28 April 1979. Immediately, she sent a telegram to her brother-in-law, Alex Bautista, at Roxas, Isabela, requesting the latter to bring Complainant home to Lambaken so that she could verify the truth. The day after Cresencia had sent the telegram, Alex and the Complainant arrived. The latter recounted how she was taken advantage of by the Accused. Because Cresencia was a widow and financially hard-up, she decided to ask for help from her brother, Florencio Paynor, who was staying in Echague, Isabela. Thus, Cresencia, Complainant and Alex immediately went to Echague, Isabela, that same afternoon, and on 7 May 1979, Complainant signed and filed a criminal complaint for Rape with the Municipal Court thereat (Exhibit "C").

The corresponding Information was thereafter filed with the Court of First Instance of Isabela and trial on the merits ensued. On 7 June 1982, said Court[1] found the Accused guilty beyond reasonable doubt and convicted him of the crime charged. The dispositive portion of the Decision reads:

"WHEREFORE, in the light of the foregoing considerations, the Court finds the accused, DANILO ISON alias DANNY, guilty beyond reasonable doubt of the crime of RAPE AS DEFINED AND PENALIZED under Art. 335 of the Revised Penal Code, as amended by Republic Acts Nos. 2632 and 4111, and as charged in the Information, and accordingly, hereby sentences him to suffer the penalty of reclusion perpetua, with all the accessory penalties provided for by law, to pay and indemnify the offended party, LEONILA SANTIAGO, the amount of TWELVE THOUSAND PESOS (P12,000.00) as moral damages, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"In the service of his sentence, the accused shall be extended the benefits of Article 29, Revised Penal Code, as amended by Republic Act No. 127, when he underwent preventive imprisonment from May 14, 1979 to May 18, 1979, provided he complied with the conditions therein imposed."

"SO ORDERED." (pp. 23-24, Rollo)

In this appeal, the Accused faults the Court a quo with the following errors:

"(1) The trial court erred in not considering and finding that it was physically improbable, if not impossible, for the accused to be at the scene of the alleged rape at the diversion road near the cemetery of Echague, Isabela, in the evening of April 17, 1979 considering certain factors/circumstances (discussed hereunder).

"(2) The trial court erred in believing complainant's utterly incredible story of rape in this case.

"(3) The trial court erred in convicting the appellant and in not acquitting him of the criminal charge of rape."
(p. 1, Accused-Appellant's Brief)

Being inter-related, we will discuss the first and second assignments of error jointly.

It is the Accused's submission that they left Barrio Lambaken, Jaen, Nueva Ecija, at 5:00 P.M. and not at 4:30 P.M. as alleged by Complainant; that considering the physical distance of 267 kilometers from Barrio Lambaken, Jaen, Nueva Ecija to Echague, Isabela, the scene of the alleged incident, they could not have arrived at Echague in the evening of the same day inasmuch as the passenger jeepney was fully loaded with eggs up to the top and they were travelling at a speed of only 30 kilometers or less per hour besides making several stops on the way; that added to this, the bad condition of the barrio road from Lambaken, Jaen, Nueva Ecija and the treacherous zigzag from Dalton Pass, Nueva Ecija to Sta. Fe, Nueva Vizcaya, compelled them to drive slowly with great caution thereby rendering it improbable for them to have been at the diversion road near the cemetery at Echague, Isabela, in the evening of 17 April 1979 as Complainant contended.

The foregoing defense does not impress us. Under normal road conditions, 267 kilometers can be negotiated by car in four (4) to five (5) hours. Add another one (1) or two (2) hours taking into consideration that the vehicle used was a jeep and the alleged poor condition of the roads as well as the zigzag from Dalton Pass, and the aforesaid distance could have been negotiated in seven (7) hours, or up to approximately 12 midnight. Complainant's testimony, therefore, that she was abused in the evening of 17 April 1979 is sufficiently credible. And even if it were past midnight, it would still be dark "in the evening" to a 13-year old barrio lass who was not said to have been wearing a watch to tell the time by.

Alfredo Losada's testimony corroborating the Accused's theory that they never stopped at the diversion road at Echague, Isabela, is not deserving of credence not only because it is biased considering that as a helper of the Accused, he would naturally be beholden to the latter, but more so because Complainant's declarations sufficiently rebut it.

Contrary to the Accused's assertions, Complainant's story is not "utterly incredible". For one thing, the circumstance of force and intimidation attending the abuse on Complainant's person is proven not only by her testimony but also by the medico-legal report of Dr. Corazon Lappay, the examining physician. The latter attested to the existence of recently healed lacerations at 3, 6, 9, 12 o'clock positions of the hymen, thus confirming the fact of forced sexual intercourse. That physical evidence is of the highest order. It speaks more eloquently than a hundred witnesses (*People vs. Bardaje*, G.R. No. L-29271, 29 August 1980, 99 SCRA 388).

Appellant's posture that the lacerations in complainant's hymen were intentionally induced through the use of fingers to simulate a rape case was refuted by Dr. Lappay who testified that fingers could not cause the multi-lacerations sustained by complainant (t.s.n., December 18, 1979, pp. 19-20).

The absence of bruises, contusions and abrasions in the body of the complainant is neither inconsistent with her claim that she was ravished by the accused in the manner she described. It is to be recalled that Complainant was boxed in the abdomen as a result of which she lost consciousness. It was thus unnecessary to inflict other injuries on her.

The absence of any discernible trace of a fist blow on Complainant's abdomen is of no moment either, especially since the medical examination on her was conducted seventeen (17) days after the incident, at which time no visible signs of such injury might be expected any longer (*People vs. Rouben Corral y Hernandez*, G. R. No. 73604, 29 January 1988, 157 SCRA 673).

The non-presentation of Complainant's torn panty was due to the fact that she had thrown the same in the garbage can upon reaching Roxas. A simple barrio girl like her could not be expected to realize its evidentiary value in the event of a court litigation.

Furthermore, Complainant lost no time in denouncing the wrong done to her upon arrival at Roxas by writing a letter to her mother at Jaen, Nueva Ecija. This fact immediately negates any alleged voluntary submission of Complainant to the Accused's sexual advances (*People vs. Isaac*, G. R. No. 36136, 16 March 1988, 158 SCRA 725).

Indeed, Complainant, a thirteen-(13)-year old girl, could not be expected to personally report to the police without the knowledge of her elders.

The Accused makes much of the alleged inconsistency in the prosecution evidence in that while Complainant testified that she wrote her mother upon her arrival on 18 April 1979 the postmark stamped on the envelope shows that it was received in "Jaen, Nueva Ecija, on April 17, 1979." The records show, however, that the latter postmark had been crossed out and initialed to correct the mistake in the dates. This conclusion is supported by

two other entries in the envelope which read: "Jaen, Nueva Ecija Received April 27, 1979 Philippines" (Exhibit "B-I-C") and "Roxas P.O. 19 IV 79 Isabela" (Exhibit "B-I-A"). These entries show that the letter was actually mailed at Roxas, Isabela, on 19 April 1979 and received at the Jaen, Nueva Ecija Post Office on 27 April 1979. Evidently, if the letter was mailed at Roxas, Isabela on 19 April 1979, it would be impossible for it to reach the Postal Office of Jaen, Nueva Ecija, 267 kilometers away on 17 April 1979 or two (2) days before it was mailed (Section 1, Rule 129, Rules of Court). And, as to whether Complainant's mother sent the telegram to her brother-in-law via the Bureau of Telecommunications or RCPI is actually inconsequential.

The defense also sought to establish that it was impossible to commit Rape on the front seat of the jeep. It even presented the vehicle for ocular inspection and made Complainant demonstrate how the crime was committed. Photographs of the demonstration were also submitted in an attempt to prove impossibility of its commission. Suffice it to state that the front seat of the jeep measures 62 1/2 inches long, which is equivalent to approximately five feet and two and one half inches, and twenty-nine (29) inches wide (t.s.n., August 9, 1980, p. 315). Complainant was somewhat thin and short, as can be seen from the photographs (Exhibits "3" and "3-D"). Complainant even demonstrated to the Court that she could lie flat on the front seat, her feet to the right side thereof (t.s.n., August 9, 1980, pp. 35-36). Neither is the Accused a very big man; he is 5' 5" in height and weighs 116 lbs. as disclosed by the record. It was not impossible then for Complainant to have lain flat on the front seat with the Accused on top of her. It should be recalled that Complainant was unconscious at the beginning of the commission of rape because the Accused had boxed her in the abdomen. When she was thus rendered unconscious, it was a simple matter for the accused to have positioned her so that he could abuse her with ease.

"A rapist, however, rarely considers the position his victim may have in the sexual act, his purpose is to be sated and that alone. Whether or not his victim is contorted is the least of his concern. It is not improbable therefore, that the appellant could have violated the complainant in the manner she described" (People vs. Salazar, 93 SCRA 796, 807).

In a last-ditch effort at exculpation, the Accused further contends that he was charged with the offense because he refused to lend money to Florencio Paynor, brother of Complainant's mother. He avers that this case was filed in order that they could extract money from him as shown by the fact that his helper, Alfredo Lozada, was not included as a co-accused although Complainant testified that said helper held her hand while the Accused was abusing her.

The contention is preposterous. It is highly improbable for Complainant's mother and close relatives to sacrifice the honor, dignity and future of an innocent young girl for such mercenary motives. Besides, the evidence amply supports the commission of the crime.

The non-inclusion of Alfredo Lozada, the Accused's helper, in the criminal Complaint can be explained by the fact that his participation was not brought up during the police investigation. It was only during the cross-examination of Complainant that "Al's" participation was disclosed.

All told, the assigned errors remain unsubstantiated and we find the conscience resting easy on a finding of guilt.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** with the modification that the indemnity to the offended party, Leonila Santiago, is hereby increased to P20,000.00 consistent with case law. With costs against the accused, Danilo Ison.

SO OREDERED.

Paras, Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Decision penned by Judge Procoro J. Donato.

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