

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAXIMO MALABAD, ACCUSED-APPELLANT.

G.R. No. 63219. November 28, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

MAXIMO MALABAD was accused of rape in Criminal Case No. 1014 of the defunct Court of First Instance of Cagayan in an information which reads as follows:

"That on or about November 29, 1977, in the municipality of Solana, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Maximo Malabad y Carodan, by means of force, did then and there willfully, unlawfully and feloniously have sexual intercourse with the offended party Natividad Malabad, against her will." (Expediente, p. 33.)

Arraigned on August 23, 1978, he pleaded NOT GUILTY. (Id., p. 57.) After trial, he was sentenced as follows:

"WHEREFORE, in the light of the foregoing considerations, the court finds the accused Maximo Malabad y Carodan, guilty beyond reasonable doubt of the crime of rape, defined and penalized under paragraph 1 of Article 335 of the Revised Penal Code, and there being no modifying circumstances, imposes upon him the penalty of RECLUSION PERPETUA, including all accessory penalties as provided for by law, and to indemnify the complainant Natividad Malabad the amount of P12,000.00, without subsidiary imprisonment in case of insolvency in view of the penalty imposed, and to pay the costs." (Id., p. 291.)

The People's version of the facts adopts the narration made by the trial court adding thereto, however, the page references to the transcripts of the stenographic notes and the exhibits as required by the Rules of Court. It reads:

"It appears that Natividad Malabad is an orphan. Her father, Feliciano Malabad and her mother died, when she was three years old. She grew up and stayed with her eldest brother, Juan Malabad, and her sister-in-law, Matea Malabad, at their house in Centro, Solana, Cagayan. (pp. 3, 10, tsn, Sept. 27, 1978 AM; pp. 7-9, 22 tsn, April 20, 1980; p. 9, tsn, August 17, 1982)

"x x x on November 29, 1977, there was some party, a birthday party, at the house of Matea Malabad, in the afternoon. So, Doca Lalisi, Rosalina Manalang, Lydia Bangayan and Matea Malabad played mahjong. (pp. 3-4, 18-20, tsn, Sept. 27, 1978 AM; pp. 8, 15, tsn, April 20, 1980; Exhibit "A")

"Thinking that the group would play over-night, and the coffee might not be enough, Matea Malabad buy another coffee. (pp. 4, 20, tsn, Sept. 27, 1978 AM; pp. 8, 19, tsn, April 20, 1980; Exhibit "A")

"Later, at about six to seven o'clock in the evening of the same day, Matea Malabad sent Natividad Malabad to buy coffee and sugar. Natividad Malabad then went to a store in the market of Solana, Cagayan to purchase coffee and sugar. (pp. 4, 20, tsn, Sept. 27, 1978 AM; pp. 9, 17, tsn, April 20, 1980; Exhibit "A")

"On her way home, Natividad Malabad was met by Maximo Malabad, her uncle, being the brother of Feliciano Malabad, the father of the former, in front of the San Vicente school. Maximo Malabad pulled her. Natividad Malabad resisted, saying why are you bringing me. Then Maximo Malabad brought Natividad Malabad at the

back of the stage in front of the school. (pp. 10-11, 17-18, tsn, April 20, 1980; pp. 7-8, tsn, Sept. 27, 1980; pp. 12-18, 19, tsn, July 12, 1980; Exhibit "A") While at the back of the stage she fought Maximo Malabad, and the latter closed the mouth of Natividad Malabad, using his hand, and forced her to lie down at the back of the stage and again she fought him, and forced her to remove her panty. When Maximo Malabad forced her to lie down, by pushing her backwards, and when Natividad Malabad fell down, Maximo Malabad removed her panty by pulling it, using his right hand, and inserted his penis into her vagina. The left hand of Maximo Malabad was covering her mouth so she could not shout. She resisted and struggled but Maximo Malabad was strong. She was pushing him away, using her right hand. (pp. 11-12, 18, 19, 21, 24, 25-27, tsn, April 20, 1980; Exhibit "A")

"When Natividad Malabad was lying down, Maximo Malabad kissed her, she avoided his kiss and she resisted. Then the accused held with his left hand her nipples, but she resisted, and re-moved his hand from her breast, and the accused again tried to hold her breast. (pp. 21-22, 27, tsn, April 20, 1980; Exhibit "A")

"The accused then told Natividad Malabad not to report to anybody, her brother and sister-in-law what happened otherwise he will shoot and kill her. (pp. 11, 22, 25, tsn, April 20, 1980; Exhibit "A")

"After the sexual congress, Natividad Malabad left for home, crying. Upon arrival at home, Natividad Malabad related to Matea Malabad about the incident. Her skirt was inspected by Matea Malabad. She was asked by Matea Malabad what happened to her and was asked who did it. Natividad Malabad replied that Maximo Malabad did it. (pp. 12, 17, tsn, April 20, 1980; p. 6, tsn, Sept. 27, 1978; Exhibit "A")

"Matea Malabad brought Natividad Malabad to the house of Dr. Taguba, who gave her eight tablets of medicine. (p. 13, tsn, April 20, 1979; pp. 10, 14-15, tsn, Sept. 27, 1978; Exhibit "A")

"Matea Malabad, however, in her testimony, stated that when Natividad Malabad arrived at their house, she inquired from Natividad why she arrived late and Natividad answered she lost the money given to her to buy coffee. Matea Malabad remained silent as she felt ashamed with her visitors. (pp. 4-5, 20, tsn, Sept. 27, 1978)

"The following morning, Matea Malabad wanted to send Natividad Malabad again, but she noticed that Natividad was weak as if she was sick. Matea Malabad asked Natividad Malabad if she was sick, where-upon she saw the skirt of Natividad, which is blue in color, full of blood stains. Matea Malabad held the blood stains in the skirt of Natividad and smelled it. The blood stains seem to be very fresh and smells as if there were sperm. (pp. 5-6, 20, 22-24, 26, tsn, Sept. 27, 1978)

"Matea Malabad asked what happened from Natividad Malabad, and the latter cried and replied, saying Uncle Momoy forced me. (pp. 6, 21, tsn, Sept. 27, 1978)

"Matea Malabad asked repeatedly for three times, who is the fellow because she could not believe that it was the uncle, but Natividad answered Uncle Momoy, referring to the accused Maximo Malabad. (pp. 6, 20, tsn, Sept. 27, 1978)

"Then Matea Malabad inquired how Maximo Malabad forced her and Natividad Malabad said that when she was going home, she was pulled by Maximo Malabad and brought to the back of the stage in a dark place in the San Vicente Institute of Centro, Solana, Cagayan. Natividad added that she grappled with Maximo Malabad. That she wanted to shout but Maximo covered her mouth, and when she became weak he did what he wanted to do. Natividad became weak because she grappled with the accused, and when she became weak, the accused got her womanhood, by placing his penis inside or inserting it in her vagina, and it was painful. Then Natividad further told Matea Malabad that Maximo pulled her, she got up and warned her not to tell anybody other-wise Maximo will kill her. That was why, Natividad did not tell Matea Malabad about what happened to her. (pp. 7, 9, 21-22, tsn, Sept. 27, 1978 AM; p. 12, tsn, April 20, 1980; Exhibit "A")

"At this juncture, Matea Malabad felt weak and was trembling, and became hysterical and went to consult Dr. Luzviminda Taguba. Matea Malabad related to Dr. Taguba that she was hysterical due to what happened to her

sister-in-law, and Dr. Taguba advised her to bring her sister-in-law as she might become pregnant due to the inter-course. (pp. 8, 10-11, tsn, Sept. 27, 1978 AM)

"When Matea Malabad arrived at their house she was personally examining Natividad Malabad when her husband Juan Malabad arrived. Matea Malabad tried to cover the incident and not to tell her husband about it, but Natividad Malabad told Juan Malabad that Uncle Momoy forced her. (p. 13, tsn, Sept. 27, 1978 AM)

"Whereupon, Juan Malabad boxed the walls and wanted to throw a bottle at Natividad Malabad, but Matea Malabad grabbed the bottle from him. Then Juan Malabad got a pair of scissors and wanted to stab Natividad Malabad but Matea Mala-bad was able to grab it. (pp. 13-14, tsn, Sept. 27, 1978 AM)

"Matea Malabad told her husband that Nativi-dad has no fault and that it would be better if they bring Natividad to a doctor and have the incident blottered in the Municipal Building. (p. 14, tsn, Sept. 27, 1978 AM)

"Thereafter Matea and Natividad went to the Municipal Hall. Pat. Laurente, a policeman, advised them to go to a doctor and they went to Dra. Taguba, who gave Natividad eight tablets of medicine. As Dra. Taguba was then busy, she advised Natividad and Matea to go instead to the Cagayan Provincial Hospital at Tuguegarao, Cagayan. (pp. 14-15, 24, tsn, Sept. 27, 1978; pp. 13, 14, tsn, April 20, 1980; Exhibit "A")

"According to the testimony of Natividad Malabad during her examination, she stated that they used an instrument to extract sperm from her vagina. (pp. 13-14, tsn, April 20, 1980)

"After the examination of Natividad, they waited for the medical certificate. A medical certificate was then issued by Dr. Rolando M. Mezde, a resident physician of the Cagayan Provincial Hospital. (p. 16, tsn, Sept 27, 1978 AM; pp. 14, tsn, April 20, 1980; Exhibit "D")

"The medical certificate issued by Dr. Mezde was offered in evidence as Exhibit D for the prosecution. The findings are quoted as follows:

'Hymenal laceration over 5 o'clock

Healed round

Hymenal laceration at 7 o'clock

Healed round edge.

Note: Urethral smear.

No spermatozoa found.

Negative for gram - negative diplococci.

Presence of Douder like Bacilli.'

(Exhibit "D"; see also Exhibit "C")

"The record of Natividad Malabad at the Cagayan Provincial Hospital is Case No. 20866, as appearing in Exhibit "C", which was prepared and signed by Dr. Mezde, the attending physician who examined the body of Natividad Malabad. The signature of Dr. Mezde in Exhibit B, C and D were identified by Mrs. Fe S. Sibbaluca, the chief me-dical records librarian of the Cagayan Provincial Hospital at Tuguegarao, Cagayan, in view of the failure of Dr. Mezde to appear as a witness du-ring the trial, as he was transferred to another address. (pp. 2-5, tsn, July 16, 1980; pp. 3-4, 10-11, tsn, Jan. 21, 1982)

"Subsequent to the issuance of the medical certificate (Exh. D), Natividad Malabad and Matea Malabad went to the Municipal Hall of Solana, Cagayan, and were investigated by the police authorities, and both of them gave their respective sworn statements. After their sworn statements were taken by the police investigators, a criminal complaint under oath was signed by Natividad, as evidenced by Exhibit E, accusing Maximo Malabad of the

offense of rape. (pp. 16, tsn, Sept. 27, 1978; Exhibit "A")

"After the criminal case was filed and received by the Municipal Judge of the Municipal Court of Solana, Cagayan, a warrant of arrest was issued on December 5, 1977. (p. 17, tsn, Sept. 27, 1978)

"Patrolman Pedro Castañeda of the Inte-grated Police of Iguig, Cagayan, was able to effect the arrest of the accused on February 3, 1978, at Barrio Caggay, Tuguegarao, Cagayan, inside the house of one Mitong Tamayo where the accused was hiding. The accused covered himself with a blanket, but Pat. Castañeda brought the former out and brought the accused to the police headquarters. (pp. 1-3, tsn, March 21, 1980; p. 25, tsn, July 12, 1980)" (Brief, pp. 2-8.)

The appellant claims that the trial court committed factual errors. The appellee disputes the claim and recommends affirmance of the judgment in its entirety. We affirm.

To impugn the credibility of Natividad the appellant claims "that it was highly improbable for the complainant to have come out, admittedly UNSCATHED, WITHOUT ANY BRUISES, SCRATCHES, OR ABRASIONS, OR ANY INJURIES, SUSTAINED by her, from that 2 hours long STRUGGLE AND GRAPPLING WITH APPELLANT, as shown by the MEDICAL CER-TIFICATE, Exh. D, WHEN IT HAS BEEN ESTABLISHED AND AD-MITTED NO LESS BY COMPLAINANT HERSELF, THAT THE PLACE WHERE SHE WAS ALLEGEDLY RAPED BY APPELLANT WAS FULL OF BROKEN HOLLOW BLOCKS, and that the struggle lasted for 2 hours, with her back ON THE GROUND."

True it is that Natividad showed no physical evidence of her ordeal but such lack does not belie rape. (People vs. Ludovice, L-34986, March 23, 1984, 128 SCRA 361, 372.) True it is also that during the ocular inspection the following took place:

"FISCAL:

Q Where is the exact location where you were raped by Maximo Malabad?

A Here, sir. (Witness stands on the place which is about the middle of the back of the stage.)

COURT:

Q Was the condition of the place when the act took place on November 29, 1977 the same as of now?

A Yes, sir.

ATTY BULAN:

May I make of record that the place of the alleged act between the aggrieved party and the accused is full of broken hollow blocks.

Q And this is the place where the struggle took place is it not?

A Yes, sir, this is the place where we struggled lying down for a long time." (TSN, pp. 58-59.)

That the site indicated by Natividad was strewn with broken hollow blocks does not necessarily mean that the rape took place atop the debris for there could have been some spot which was free of such matter.

The length of time when Natividad struggled with her uncle to preserve her chastity was merely the estimate of a girl of tender years as shown by the following:

"FISCAL:

Q By the way, do you know how long is two hours?

A It is just my . . . I don't know how long is two hours.

COURT:

Q When you testified about the length of time you were here for two hours, you were only talking of your estimate?

A Yes, sir." (TSN, p. 59.)

The appellant further impugns the credibility of Natividad by calling attention to the medical certificate - Exhibit A - which states that the hymenal lacerations at 5 and 7 o'clock are both "healed round edge" and that "no spermatozoa found." He claims that if she had been raped, the lacerations should have been fresh since she was examined only one day after the incident. The People's answer to this claim is well-taken, to wit: "[T]here is no showing, and no evidence was presented on this aspect, that the hymenal lacerations were large, deep and severe which would not be healed a few hours after sexual intercourse. Since the rape was committed at around past 7:00 PM of November 29, 1977 and the examination of the victim's sexual organ was made at around 'four o'clock in the afternoon of November 30, 1970' (p. 15, tsn, Sept. 27, 1978), there has been a long interval or period of more than twenty (20) hours, during which period, the complainant took eight (8) tablets of medicine, given by the first doctor, Dr. Taguba, 'to prevent pregnancy' (p. 15, tsn, id.), which may have caused the said hymenal lacerations to be 'healed' by the time Dr. Mezde examined the victim. Under this circumstance, it would not necessarily mean that the hymenal lacerations, found to be 'healed' 20 hours later during the medical examination of the victim's organ, would negate the victim's direct and positive testimony that she was raped by the appellant during the evening in question." (Brief, pp. 11-12.) As to the absence of sperm, it suffices to say that such circumstance does not per se negate rape. (People vs. Jose, L-28332, Feb. 6, 1971, 37 SCRA 450; People vs. Carandang, L-31012, Aug. 15, 1973; 52 SCRA 259; People vs. Ytac, L-47568, Jan. 28, 1980, 95 SCRA 644; People vs. Balane, L-48319-20, July 25, 1983, 123 SCRA 614.) (Brief, p. 13.)

Matea Malabad, sister-in-law of Natividad, testified that in the morning of November 30, 1977, she noticed that the latter's skirt was full of blood stains which smelled like sperm cells. (TSN, p-5.) This testimony bolstered Natividad's claim that she had been raped or at the very least that she had a recent sexual contact.

The appellant now claims that "[t]he lower court gravely overlooked and failed to consider the falsity of the prosecution's claim that the complainant's skirt was full of fresh blood which smells like sperm cells, but the presence of which is suprisingly NOT CONFIRMED by the MEDICAL AND CLINICAL FINDINGS of the complainant, which findings NEGATE THE PRESENCE OF SUCH FRESH BLOOD, AND THE UTTER FAILURE of the prosecution to present said bloodied skirt of the complainant during the trial of the case."

The absence of sperm cells on Natividad's person has already been discussed. Additionally, it may be conjectured that during the struggle the appellant emitted his substance not inside Natividad but on her dress. As to the failure of the prosecution to present the skirt during the trial, the same is not fatal to its case. The rape took place on November 29, 1977, while the trial was commenced on September 27, 1978. After the lapse of more than ten months the alien matter on the skirt had dried up and lost its evidentiary value.

Natividad testified that she told Matea of the rape on November 29 but Matea said she was told about it only the next day. The appellant impugns their credibility on the basis of this discrepancy.

We hold that the discrepancy is not sufficiently material to destroy their credibility. It should be noted that Natividad was under some stress when she testified. For some time she kept looking at Matea and Juan Malabad perhaps for assurance and moral support. And it was the court itself which elicited the information that she revealed the rape to Matea when she returned after her unaccomplished errand. For a young girl in unaccustomed

surroundings to make an innocent mistake is not impossible.

The appellant also points to the reaction of Juan Malabad (he got mad at Natividad and wanted to harm her) after having been informed of the rape as "intriguing" and indicative "that he did not believe the truth about the alleged rape of his sister." As We see it, Juan Malabad's reaction was neither intriguing nor did it indicate lack of belief on his part. For it is not unusual for a person to act irrationally upon hearing something which is shocking and deeply affects the family.

And as to the claim that the rape charge was inspired by a misunderstanding between the appellant and his brother, Juan, the same is too crude to be convincing. We quote with approval the observation of the trial court:

"Assuming that there existed bad blood between Juan Malabad and Maximo Malabad, before the incident happened, and that the accused was the butt and target of revenge and vengeance as the accused reasons out to be, will these motives be so powerful and overwhelming to impel, Natividad Malabad, to bring and hale the accused in court for such a heinous and detestable crime of rape, at the behest and instigation of Juan Malabad, an elder brother.

"To the mind of the court, it is hard to believe that the motive underlying the accusation of rape by Natividad Malabad against her own uncle the accused as amplified by the accused is not a compelling and cogent one, to warrant ample justification for the victim to accuse her own uncle and undergo the trouble and humiliation of a public and open trial, if her motive was not to bring to justice the person who had dishonored her and deflowered her virginity.

"On the contrary, the court feels that the complainant had no plausible reason to fabricate and frame up a story of rape against her honor, filed a complaint of rape against her own uncle, and suffer the ignominy of having to testify in court about the sexual abuse and human indignities done to her, if in truth she was not raped.

"Well settled is the rule that an offended party in a rape case would not unduly expose herself publicly and in a public court trial expose that she was raped, and her private parts examined if her intention is not to seek justice and vindicate a wrong done." (Expediente, pp. 286-287.)

The defense of the accused during the trial was alibi. He claimed that he was in his house in the evening of November 29, 1977; that his house is about 20 meters distant from Juan Malabad's house and about 100 meters away from San Vicente school [the site of the rape].

It is obvious that the alibi is useless for he was positively identified by Natividad as her ravisher. In fact, he admits the inherent weakness of his alibi. Instead he claims that the prosecution's evidence lacks the necessary strength to secure a conviction - a claim which We do not share for the reasons stated above.

In his desperation, the appellant claims, "Even assuming *arguendo*, that appellant did have sexual communication with the com-plainant, the same must have been done with her consent, since all throughout her testimony there was no evidence given by her that she was knock out or rendered unconscious by appellant, when she was brought and taken to the scene of the crime." We cannot believe that Natividad would consent to have sex with her uncle at the time and place indicated. It is simply not in accord with the nature of an un-sophisticated rural girl not yet a woman.

And finally, why did the appellant flee? Again as the trial court stated:

"Another fact and circumstance which the court considers as engendering the guilt of the accused was his flight a couple of days after the unfortunate incident. He left his house at Solana, Cagayan, with the pretext that he was going to Manila to visit a close kin. For almost three months he has evaded arrest, until he was arrested on February 3, 1978 at Caggay, Tuguegarao, Cagayan at the house where he was hiding belonging to Alfonso Tamayao.

"The court believes that the pretext of the accused that he left for Manila after coming to know of the case filed against him for rape on December 7, 1977, and went back after receiving a telegram from his son on the middle part of December, 1977 for him to hide and when he returned he did so surreptitiously and went to see Atty. Bulan, who advised him to look for a bailbond. But the records show that there was no bail recommended by the Municipal Judge. The accused then occasionally went to Solana, Cagayan unnoticed. Until he went into hiding at the house of Alfonso Tamayao, at Caggay, Tuguegarao, Cagayan. When he was arrested he was found to have covered himself with a blanket inside the house." (Id., pp. 288-289.)

WHEREFORE, the judgment of the court a quo is hereby affirmed with the sole modification that the indemnity payable to Natividad Malabad shall be P20,000.00. Costs against the appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion, Jr., Escolin, and Cuevas, JJ., concur.

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