

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO ESPIRITU, DEFENDANT-APPELLANT.

G.R. No. 63451. May 31, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the decision of the Regional Trial Court of Bangued, Abra convicting Ernesto Espiritu of the crime of rape in Criminal Case No. 1513 and sentencing him "to suffer the penalty of reclusion perpetua and to indemnify the victim the sum of Fifteen Thousand Pesos (P15,000.00) as moral damages."

In her complaint, Marieta Trongco alleged that -

"That on or about September 18, 1982, at Quimloong, in the municipality of Bucay, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and violence, did then and there, wilfully, unlawfully and feloniously had sexual intercourse with one Marieta F. Trongco, a 12 year old girl, single, without her consent and against her will." (page 50, Rollo).

Prosecution evidence shows that complainant Marieta Trongco is the 7th child in a family of nine. She is a first year high school student and a resident of Quimloong, Bucay, Abra. Accused Ernesto Espiritu is her brother-in-law, being the husband of her elder sister.

Around 5:00 in the afternoon of September 18, 1982, Marieta was in the house of Eutiquio Pacano watching a television program. When she felt the urge to urinate, she went to the eastern part of the house and there she urinated. Accused-appellant suddenly arrived and pulled her in the direction of the forest where she was made to lie down and had sexual intercourse with her. She tried to shout for help but Espiritu closed her mouth with his hand and, subsequently, with a handkerchief. The accused then boxed her in the stomach, causing her to lose consciousness. When she regained consciousness, accused was already on top of her performing sexual intercourse. The accused then stood up and left. She also stood up, put on her pantie and ran home. She reported the matter to her father, Benjamin Trongco, that her brother-in-law, Ernesto Espiritu, had abused her. Her father and a brother went to look for the accused but they failed to find him. Said accused never showed up again in their house.

The next day, the matter was reported to the police substation at Bucay, Abra. The police authorities took the statement of Marieta and then had her examined physically at the Abra Provincial Hospital. Dr. Fidel Gabat looked her over and then issued a medical certificate containing the following:

"External:

Hymen with old laceration at 6:00 and 11:00 o'clock positions.

Vaginal opening admits 2 fingers.

Spermatozoa - negative per Laboratory Technician."

In this appeal, Ernesto Espiritu alleged that the lower court erred in not acquitting him on ground of reasonable doubt.

The defense is denial and alibi, appellant claiming that on the date in question, he was at Patok, Bucay, Abra; however, he admitted that in the morning of September 18, 1982, he was at Quimloong.

WE find the judgment of conviction by the lower court well supported by the evidence and, it should, therefore, be affirmed. As aptly observed by the trial court -

"The claim of the accused that he did not abuse the complainant because he was at Patok, Bucay, Abra at the time of the incident is unreliable and unworthy of belief. Accused admitted that he was at Quimloong in the morning of September 18, 1982. There was nobody presented to corroborate him that he was at Patok, Bucay, Abra in the afternoon of September 18, 1982. Patok is a neighboring barangay of Quimloong, Bucay, Abra, and there is no showing whatsoever of the impossibility that the accused was not at Quimloong, Bucay, Abra in the afternoon of September 18, 1982. It is nearer the truth and acceptable to reason that after having committed the act and knowing that the complainant had reported the matter to his father-in-law Benjamin Trongco, he went to Patok, Bucay, Abra where he stayed until arrested.

"Between, therefore, the affirmative declaration of the complainant Marieta Trongco that she was forcibly raped by the accused and the alibi of the accused amounting to a denial, the Court has to give greater weight to the former. The defense of alibi interposed by the accused is unbelievable and cannot prevail over the direct and positive testimony of the complainant Marieta Trongco." (p. 53, Rollo).

Appellant's contention that there could have been no sexual intercourse on the date in question because of the doctor's findings that the laceration of complainant's hymen is old, is untenable. For, be that as it may, the crime of rape is not dependent on the virginity of the offended party. The fact that she was no longer a virgin is no defense.

Complainant was only 13 or 14 years old at the time and she has no reason to publicly expose herself to have been ravished by a brother-in-law. Patok, Bucay, Abra is only 3 to 4 kilometers away from Quimloong. It is not therefore physically impossible for him to be at the scene of the crime before, during or after he was allegedly at Patok. Further, the fact that he left the place and failed to show up until he was arrested is a circumstance of guilt.

IN VIEW OF THE FOREGOING, the appealed decision is hereby AFFIRMED in toto. With costs. SO ORDERED.

Melencio-Herrera, Plana, Gutierrez, Jr., and De La Fuente, JJ., concur.

Teehankee, J., (Chairman), no part.

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