

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GIL BIHASA, DEFENDANT-APPELLANT.

G.R. No. 63452. June 25, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Court of First Instance of Aurora, Ninth District, finding accused-appellant Gil Bihasa guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the victim, Marilyn Maliwanag in the sum of P12,000.00, the victim's father in the sum of P6,000.00 and the victim's mother in another sum of P6,000.00 without subsidiary imprisonment in case of insolvency, with all the accessory penalties of the law, and to pay the costs.

In a criminal complaint filed by the offended party, appellant Gil Bihasa was charged with the crime of rape, committed as follows:

"That on or about the 10th day of June, 1981, at about 11:00 o'clock in the evening, in the Municipality of San Luis, Province of Aurora, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force, threats and intimidation, to wit: by threatening to kill the said Marilyn Maliwanag with a knife locally known as 'kutsillo' which he pointed at her neck, did then and there wilfully, unlawfully and feloniously have sexual intercourse with her against her will."

Before trial, appellant furnished bail for his temporary liberty. When arraigned, he entered a plea of not guilty.

The People's version of the facts is as follows:

"On June 10, 1981 at around 11:00 o'clock in the evening, complainant Marilyn Maliwanag went to sleep in the room at their one story house located in Barangay Zarah, San Luis, Aurora. Across the hallway, opposite her room was another room where her two brothers, Nixon (11 years old) and June (10 years old) and first cousin Teresita España (20 years old) were sleeping (pp. 2-3, tsn., Nov. 9, 1981). Her parents were then in Cabanatuan City (p. 7, *ibid*).

"At around 1:00 o'clock, the early dawn of June 11, 1981, she was awakened when she felt somebody lay on top of her. She recognized that 'somebody' as the appellant Gil Bihasa. There was a kerosene lamp opposite her bed (p. 5 *Ibid*). Appellant was completely nude and was holding a bladed weapon which was more or less five (5) inches in length (p. 3, *ibid*).

"When she awakened, complainant realized that her panty was no longer on and that appellant was pointing the knife at her neck. She tried to free herself but was not able to. Neither could she make any outcry because of appellant's threat that if she did not surrender her womanhood, appellant would thrust the knife at her. Appellant held the knife with his right hand and pinned the complainant by the shoulder with his left hand. He succeeded in inserting his organ into hers but each time it would slip out because of the struggle put on by the complainant. Everytime appellant's organ would slip out, he would again reinsert the same and this went on for about five (5) times. After sometime, complainant felt something come out of appellant's organ (4-5, *ibid*).

"After appellant had satisfied his lust, he threatened the complainant not to reveal to anybody what transpired or something bad would happen. Appellant put on his pants, slung his T-shirt on his shoulder, wrapped the knife with a piece of paper and went out of the house (pp. 5-6, *ibid*)."

The prosecution presented as witnesses complainant Marilyn Maliwanag, Dr. Romeo Chua who conducted the medical examination, Teresita España, and the victim's father, Jose Maliwanag. Testimony of España as outlined by the trial court shows that:

"España went out to piss and saw the accused, whom she knew because he is the chairman of the Kabataang Barangay, come from the room of Marilyn. He passed by her on his way to the sala which was lighted by a kerosene lamp. He was wearing denim pants with his T-shirt slung over his shoulder and holding a knife which he was wrapping in a piece of paper. He hurriedly went out of the house thru the sala and front door, which, before they went to bed was closed by Nixon Maliwanag but it could not be locked securely and could be opened from the outside if he pushed with force. She went to the room of Marilyn and asked what happened to her. Marilyn did not answer, had no skirt and panties and was crying and covering her eyes with the back of her right hand. They did not converse because Marilyn was still shocked with what happened to her. When Marilyn did not answer she went back to bed.

"On June 11, 1981, Marilyn just stayed in the house because she was still shocked with what happened to her. In the evening, España asked Marilyn what happened to her, and the latter confessed to her what happened."

The father's testimony may be summarized as follows: on June 10, 1981, he was in Cabanatuan City; he returned to Barangay Zarah, San Luis, Aurora on June 19, 1981; after eating breakfast on said date, his daughter Marilyn, asked permission and money for enrolment at Mount Carmel at Baler, Aurora; in the afternoon of the same day, Teresita España told him that at around one o'clock in the morning of June 11, 1981, she saw Gil Bihasa go out of the room of Marilyn; and upon being informed of this matter, he went to Ernesto Bihasa, the older brother of Gil, to inform him of what Gil did to his daughter. (tsn., November 20, 1981, pp. 3-6)

The defense of the appellant is plain alibi. He declared that on the afternoon of June 10, 1981, as chairman of the Kabataang Barangay, he attended the pulong-pulong called by Mayor Pimentel to discuss the coming presidential elections. At about 5:00 o'clock in the afternoon, after the meeting adjourned, he, together with Amando Morillo and Florencio Imbestro, proceeded to the house of Armando Bihasa about 30 meters from the barangay hall where they had a drinking spree and drank San Miguel gin. He stayed there up to about 9:00 o'clock that evening, then went home where he ate, went to bed, and did not go out anymore. His house was only around 250 meters from the house of Marilyn. (tsn., July 6, 1982, p. 3)

The lower court held that the alibi of the appellant was worthless because he was positively identified by the victim and as against this positive identification, he never categorically denied that he had sexual intercourse with Marilyn by force and intimidation and against her will but merely implied that the incident did not happen.

In view of the severity of the penalty for the offense of rape, justified by the "traumatic consequences for the unfortunate victim and the grievous injury to the peace and good order of the community," there is need for extreme care on the part of the judiciary to avoid injustice being done to the accused. For it is equally true that this is an offense to which, as is often the case, only two people can testify, thus requiring the most conscientious effort on the part of the arbiter to weigh and appraise the conflicting testimony. If a reasonable doubt exists, the verdict must be one of acquittal (*People v. Nazareno*, 80 SCRA 484). It must be borne in mind that it is an accusation easy to be made, hard to prove, but harder to be defended by the accused, though innocent (*People v. Barbo*, 56 SCRA 459). The evidence for conviction must be clear and convincing to overcome the constitutional presumption of innocence.

The physical examination conducted on July 16, 1981 or more than a month after the alleged rape, Dr. Romeo T. Chua, Chief of the Aurora Memorial Hospital, on the victim reveals the following findings:

"x x x Hymen with old lacerations at 3, 5, 7, and 9 o'clock. Vagina admits one finger with difficulty. Cervex enlarged with plenty of mucoidal discharge. Uterus seems to be enlarged. Adnexia negative." (Tsn., November 11, 1981, p. 31)

On the basis of the above medical findings, there was undoubtedly sexual intercourse. However, the question arises: was there rape? The victim claims she was forced by the appellant to have carnal knowledge with him at knifepoint. The appellant, on the other hand, insists that the alleged rape never took place and denied having been at the room of the victim in the evening of June 10, 1981. Instead of meeting head-on the issue of whether or not he committed the rape, the appellant presented defense witnesses whose testimonies cast doubt on the honesty and veracity of the prosecution witnesses.

As earlier stated, the appellant was President of the Federation of Kabataang Barangays of San Luis, Aurora while the complainant, Marilyn Maliwanag was the Secretary of the Kabataang Barangay of Zarah, where the appellant was also Chairman.

Briefly, the testimonies of the defense witnesses may be summed up as follows:

1. On the allegation of the victim that she did not go out of the house or talk with anybody else except Teresita España on the succeeding days after the alleged rape took place because of the trauma and shock she suffered - Rosario Buencamino Villar, executive officer of the Barangay Brigade in Barangay Zarah testified that on June 12, 1981, there was a public celebration of the Araw ng Kalayaan (Independence day); that on said date, she, together with the victim and other persons, offered flowers at the statue of President Quezon; that after the offering of flowers, there was a program held at the municipal building attended by the victim together with other members and officers of the Barangay Brigade; that the victim was in the company of the appellant; that after the program, she, together with the victim, served refreshments at the house of Rogelio Bihasa; and, that the appellant was also present at the refreshment. (tsn., February 9, 1982, pp. 2-3) Myrna Buencamino, member of the Kabataang Barangay likewise testified that on June 14, 1981, there was a Pulong-pulong sa Barangay held at the municipal building of San Luis; that she accompanied the victim together with the appellant and others attend the meeting; that the victim rendered a song during the meeting; that on June 16, 1981, she together with the victim served refreshments to the voting inspectors for the national elections; and, that she and the victim were together on a similar occasion on June 19, 1981. (tsn., February 24, 1982, pp. 2-5) Both the testimonies were corroborated by Estelita Liwag Bihasa, distant relative of the victim, and Amelie Bihasa, a close friend of the victim. In surrebuttal, Ofelia-Angara-Ulsa, clerk of the office of the Sangguniang Bayan Secretary testified that she personally took charge of the preparation of the attendance roll of the Araw ng Kalayaan celebration; and, that the victim signed the attendance sheet. (Exhs. 6 and 6-A; tsn., September 10, 1982, pp. 8-11) In rebuttal, Marilyn Maliwanag strongly denied that she was present in any of those occasions.

2. On the allegation of Teresita España that she was at the house of the victim on June 10, 1981 - Concepcion de la Torre, mother of Teresita España testified that on June 1, 1981, she gave birth in Barangay Dibut, San Luis, Aurora; that Teresita España took care of her from the 1st of June to the 25th; and, that Barangay Zarah is very far from Barangay Dibut and one will have to cross the sea in order to go to Barangay Zarah from Barangay Dibut. (tsn., June 1, 1982, pp. 9-10) In rebuttal, the prosecution presented Barangay Captain Florencio Daguman and Celso Friginal, the municipal treasurer. The former testified that on May 4, 1981, he conducted a census of Barangay Zarah; and, that Teresita España was listed as a resident of Barangay Zarah. The latter, on the other hand, testified that no record of the delivery or birth of a child was made for Consolacion de la Torre. (tsn., August 24, 1982, pp. 2-3; pp. 5-6) Jorge Maliwanag averred that Concepcion de la Torre had some grudge or ill feelings against him which probably caused de la Torre to testify against her

own daughter Teresita España.

3. On the allegation of Jorge Maliwanag that he was at Cabanatuan City from June 10 to 19, 1981 - Yolanda Imbestro and Trinidad Reopta, chairman and member respectively, of the Citizens Election Committee testified that on June 16, 1981, national election day, Jorge Maliwanag served as Inspector for the KBL Party in Barangay Zarah. (tsn., January 20, 1982, pp. 2-3; 5-6) Jorge Maliwanag rectified his previous testimony and admitted that he served as a poll inspector during the June 16 national elections; that he arrived from Cabanatuan City at Barangay Zarah in the morning of the 16th of June; that he just went to his house to take a bath and change his clothes and immediately proceeded to the polling place. (tsn., July 28, 1982, p. 9) Other defense witnesses testified that they saw Jorge Maliwanag at Barangay Zarah not only on June 16, 1981 but also on the following day. Jorge Maliwanag, however, vehemently denied having been in the Barangay on June 17, 1981 and insisted that he left for Cabanatuan City at around 11:00 o'clock in the evening of June 16, 1981.

Indeed, the above testimonies of the defense witnesses are collateral in nature. They do not tackle the main issue which is a question of rape. Instead, they try to prove the propensity of the prosecution witnesses to fabricate and exaggerate.

It is well-settled that against the positive identification of the accused, alibi is unavailing (*People v. Terrobias*, 103 SCRA 321) and that as a minimum requirement for the theory of alibi to be accepted, the accused must also demonstrate that it was physically impossible for him to be at the scene of the crime (*People v. Muñoz*, 107 SCRA 313; *People v. Capillas*, 108 SCRA 173; *People v. Sambangan*, 125 SCRA 726).

On the other hand, the prosecution cannot capitalize on the weakness of the defense theory. It must fully convince the Court beyond reasonable doubt that the crime alleged to have taken place, which in this case is the crime of rape, really occurred (*People v. Tabayoyong*, 104 SCRA 724; *People v. Delmendo*, 109 SCRA 350).

As earlier mentioned, the victim disclaimed the testimonies of the defense witnesses. She denied having attended the Araw ng Kalayaan celebration and having participated in activities incident to the national elections; having served refreshments during these activities; having rendered a song during one of the barangay meetings, and having signed the attendance roll presented as Exhs. 6 and 6-A.

Going over the records, we find no reason why the defense witnesses would fabricate their testimonies or go to the extent of forging the victim's signature on the attendance roll when a comparison of the victim's signature on the attendance roll with her other signatures on record would readily show that they were signed by one and the same person. Besides, most of the defense witnesses are friends or relatives of the victim.

The testimonies of the defense witnesses clearly contradict the statement made by the victim that after the alleged rape, she avoided large crowds and refrained from socializing with other persons because of the trauma and shock she suffered. The contradiction creates doubt regarding the honesty and veracity of the victim's testimony. If indeed the victim was seen attending these festivities in the company of the appellant, as we are more persuaded from the records to believe, we find it highly unnatural for a young woman in her twenties after having been sexually ravished to continue to socialize with her alleged rapist.

The prosecution presented evidence to show that the appellant entered the house of the victim through the front door which while left unlocked still required some force to be opened, yet not a sound was made to awaken the inhabitants of the house, namely, the victim, her two brothers, and Teresita España. The victim states that she was awakened by a completely naked man already on top of her whom she recognized as the appellant, yet the latter succeeded in removing her bikini parties with-out awakening her. She alleged that she was forced to have carnal knowledge with the appellant for more than thirty minutes while the latter held with his right hand a knife pointed

at her yet neither a shout nor a whimper was made. After the appellant left her room, the victim stated she neither moved from her position nor said anything to Teresita España. It has been held that the lack of outcry from the victim of rape after the offender had left the place contributes to render doubtful the offended party's testimony. (People v. Estacio, 111 SCRA 537)

There are other elements giving rise to misgivings of doubt. The victim's cousin, Teresita España who later testified as a key prosecution witness was sleeping with the two young Maliwanag boys in the other room. This room's doorway was covered only with a curtain and was about a meter and a half from the room where the rape allegedly took place. Marilyn Maliwanag struggled vigorously during the thirty minutes she was being raped and tried to push the appellant vigorously aside but she did not make the slightest outcry or sound even when she heard someone stand up in the other room, not even a moan of pain or weeping which could have attracted attention. The complainant stated that it was the first time she was used by a man, yet the appellant's sex organ slipped out five times in the course of the struggle and he was able to reinsert it each time it slipped out. When the appellant left the scene of the crime, he met Teresita España who was on her way to the toilet. He had only his pants on as his T-shirt was slung over his shoulder. Miss España saw him holding a knife which he was wrapping in a piece of paper. In spite of her seeing a half-naked man with a knife at such an unholy hour in their house who furtively and hurriedly passed by her on his way out, España did not cry out, call for help, or even ask him what he was doing there. She merely entered the room of Marilyn Maliwanag where she saw her cousin with no skirt and no panties, crying and covering her eyes with the back of her hand. When Marilyn did not explain, Teresita simply went back to sleep. Only in the evening of the following day were the two cousins allegedly able to discuss what had happened. Yet, the two did not report anything to anybody. Only ten days later, when Marilyn Maliwanag left Baler, where she had gone to enroll in a secretarial course, for Cabanatuan City to look for the appellant and ask him to marry her because of what he had done to her, did España tell the complainant's father about the rape. Marilyn stayed in Cabanatuan until June 23, 1981 when she returned home to San Luis. This time, she narrated everything to her parents. Still, her parents did not file any complaint. On June 20, 1981, Jorge Maliwanag had discussed the matter with a brother of the appellant and this time, on June 23, he went to see the Mayor. It was only after more than one month had passed and after a confrontation between Marilyn and the appellant was held before the mayor that a criminal complaint was filed and the victim brought to a doctor for medical examination.

We find especially strange the behaviour of the victim, Marilyn Maliwanag, who left for Cabanatuan City on June 19, 1981 to look for the appellant for the latter to answer for the wrong done to her. She had gone to Baler only to enroll in school but proceeded to Cabanatuan City alone in order to persuade her rapist to marry her.

We find equally incredulous the reaction of Jorge Maliwanag, the father of the victim, who instead of feeling outraged and betrayed, merely offered an amicable solution to the problem by asking appellant, thru Ernesto Bihasa and Mayor Cesario Pimentel to marry his daughter. Appellant opted to marry Teodora Teh Sun instead of the victim, thus leading to the filing of criminal charges. From the records of the case, it appears that there was sexual intercourse between the victim and the appellant but done willingly and voluntarily. This could have been the offshoot of an amorous relationship between the victim and appellant which, while not positively asserted by either party appears as the only logical explanation for the conflicting testimonies of the witnesses.

Quite revealing is the testimony of the medical expert, Dr. Chua:

Q. You mean she stated therein two sexual intercourse on June 10 and June 11, 1981? What do you mean?

A. She told me that there was an intercourse last June 10, 1981 at 11:00 P.M. for 4 times in their own house. And on June 11, 1981, she also had sexual intercourse for 4 times. (tsn., November 11, 1981, p. 32)

The prosecution attempted to offer an explanation for this testimony. It argued that the rape was actually committed in the early morning of June 11, 1981 but because of the proximity of the time of its commission (1:00 o'clock a.m., June 11, 1981) to the previous night of June 10, 1981, Marilyn stated that it was on the night of June 10, 1981. The explanation is not convincing enough to override the categorical statement of the medical expert to the effect that there were two sexual intercourses, one day apart, one on June 10 and another on June 11.

Because of all the foregoing, the prosecution's theory must fall. The crime of rape is not to be presumed. Consent and not physical force is the common origin of acts between man and woman (U.S. v. De Dios, 8 Phil. 279). The moral conviction that may serve as basis of a finding of guilt in criminal cases is that which is the logical and inevitable result of the evidence on record, exclusive of any consideration. Short of this, it is not only the right of the accused to be freed, it is even more our constitutional duty to acquit him. (People v. Maisug, 27 SCRA 742).

WHEREFORE, the judgment of conviction appealed from is hereby REVERSED and defendant-appellant Gil Bihasa is ACQUITTED of the crime charged.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, and De La Fuente, JJ., concur.

Melencio-Herrera, J., on leave.

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