

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN LOREDO, DEFENDANT-APPELLANT.*G.R. No. 64167. July 31, 1984*

Ponente: CONCEPCION JR., J.

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This is an appeal from the decision of the Regional Trial Court of Iloilo City in Criminal Case No. 11604 finding the accused Edwin Loreda guilty of Rape, sentencing him to suffer the penalty of Reclusion Perpetua, to indemnify the offended party, Maxiline Bautista, the sum of P5,000.00, as moral damages, without subsidiary imprisonment in case of insolvency, together with all the accessory penalties provided for by law and to pay the costs.

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

"Maxiline Bautista testified that, at about 7:00 o'clock in the evening of March 4, 1979, a Sunday, she left her house at Sinuaga, Pototan, Iloilo to attend a bible study in their barrio chapel some 100 meters away, and on the way, following a small path, about 4 meters away from her house, she was met by the appellant who said to her: 'Bing (from Bebing, her nickname), you go to the house of Mildred, I have something to tell you.' When she asked the appellant why he should tell her something in the houses of Mildred, he replied; 'Just come with me, I have something to tell you.' She acceded and went with him to the designated house which was some 50 meters away because she trusted him, he being her uncle (pp. 5-9, 21, 43, t.s.n., June 2, 1980). The house of Mildred Casquete built of bamboo was dark, the inmates thereof having gone to reside at Lapaz. They entered the fenced lower portion of the house which had a ground flooring that served as a storeroom for firewood (pp. 10, 42, 43, 45 & 47, t.s.n., Id). Once inside, the appellant embraced her. She was about to run away but he held her left hand and again embraced her saying: 'Bing, we will have sexual intercourse,' and she answered: 'What are you Edwin, I trusted you being my uncle and yet you will do that to me.' He insisted saying, 'we will just do it' (p. 11, t.s.n., Id). She was about to run away, but he pulled out his knife from his waist which he pointed to her, holding her arm with his left hand and pulling down the zipper of his pants (pp. 48, 49 & 51, t.s.n. Id). She accidentally stepped into a hole causing her to stumble and lie flat on the ground (p. 50, t.s.n., Id). Thereupon, the appellant lay on top of her, pinning her thighs with his legs (p. 11, t.s.n., Id). She struggled, but could not ward him off because he was stronger. She was about to shout but her mouth was covered (p. 12, t.s.n., Id). He took off her long pants and panties and then stood up to remove his own pants (p. 13, t.s.n., Id). She did not stand up because she was warned that if she did so he would box her on the mouth. How could she run away when the place was fenced and appellant stood by the door? (p. 13, t.s.n., Id). The appellant only wearing brief then lay on top of her and inserted his penis into her vagina, although it took him a long time to do so as his penis is quite big and this was her first sexual experience (pp. 13, 14, 19 & 52, t.s.n., Id). She did not move her buttocks but jerked upward as he inserted his penis into her vagina causing her pain (p. 52, t.s.n., Id). After the penetration, she did not struggle nor wiggle her buttocks (p. 52, t.s.n., Id). They stayed underneath Mildred's house for one hour (p. 18, t.s.n., Id). When he was through with her, the appellant told her to get up, put on her underwear and go home. She went home after receiving a warning not to tell her mother or anybody else (p. 17, t.s.n., Id). She told no one of the incident, not even to her mother, or to the police for fear her father would learn about it and kill her. Nor did she submit to medical examination. The

only time she was examined by a doctor was during her confinement at the Iloilo Provincial Hospital for uterine bleeding (pp. 35, 36 & 55, t.s.n., Id)."[1]

The accused Edwin Loredos admitted having carnal knowledge of the complainant but denied the charge imputed against him. He claimed that the sexual intercourse was done with complainant's will and consent; and that they were sweethearts. The court below made the following findings:

"Upon the other hand, the accused Edwin Loredos denied having raped the offended party. He claimed that they were sweethearts as early as December, 1978.

"It all started when the sister of the offended party, Marlene Bautista, advised Edwin Loredos to court her sister. Edwin did not like to court Maxiline because he knows she is her niece by first cousin. But Marlene kept on advising him to court Maxiline.

"Upon knowing that Marlene was advising Edwin to court her, Maxiline told her sister why advise him when he is a homosexual. Edwin heard this and he felt insulted, and so, he tried to show that he is a man by proposing to her on December 6, 1978. In less than half an hour, Maxiline accepted her proposal of love and, thereafter, they became sweet-hearts.

"On February 14, 1979, the two agreed to meet at the back of the church where they had sexual in-tercourse. Edwin was not, however, able to consummate the act of intercourse as he thought Maxiline's mother might look for her and so he ordered her to return to the plaza and attend the Valentine party. The two sent each other love letters. Maxiline gave Edwin her photograph, Exhibit '3'. Edwin, however, returned to her her letters because he was afraid his father might discover their relationship and he might drive him away.

"In the evening of March 4, 1979, Edwin was in the house of Mildred Casquete together with Alan Suegay, Rey Casquete and Mildred Casquete herself. Casquete invited Edwin to sleep in her house to accompany her son, Rey Casquete, because she was going to Iloilo City the following day.

"At around 7:00 o'clock, while reading comics in the house of Mildred Casquete, Edwin heard somebody calling for him. Rey Casquete asked Edwin to go and see who was calling for him and so he went downstairs and there he saw Maxiline who told him to be quiet as he might be heard by her mother who was in their house which was only 25 meters distant from the house of Casquete. The house of Casquete was well-lighted at the time.

"The two conversed and stayed under the house which was fenced. They covered the ground with his jacket and then lied down. The offended party prodded Edwin to take off his pants as she was taking off her pants. Then they had sexual intercourse. After that, he ordered her to go home. She passed thru the back part of the house of Mildred and proceeded home. When Edwin went upstairs she was met by Alan Suegay smiling. Edwin asked why he was smiling and he answered he saw what they did downstairs.

"On March 12, 1979, Edwin did not go to school because he had headache. When he woke up after sleeping for a while, he was surprised to see Maxiline sleeping with him on the same bed. She told him that his headache would disappear if they had sexual intercourse. And so they did have sexual intercourse.

x x x x x x x x

"On May 12, 1979, the father of Maxiline called for the parents of Edwin and they agreed that the two get married. Those who went to the house of the offended party were Edwin, his mother and Bgy. Captain Bebian Quimba. Juan Loredos was sick then and so he was not able to go to the house of Maxiline. They agreed to look for a house which they could buy so Edwin and Maxiline could have a house of their own.

x x x x x x x x

"On May 12, 1979, at around 4:00 o'clock in the afternoon, the Loredos together with Barangay Captain

Quimba and Mr. Suegay, principal of the Elementary School, went to Maximo Bautista to ask for the hand of his daughter, Maxiline. When they arrived at the house of Maximo they saw him asking his daughter, Maxiline, why she did it, to which the latter answered she wanted to marry Edwin. Maximo Bautista then agreed they just settle the matter and make arrangements for the wedding of the two and to help them construct even a small house." (Appendix, Decision, p. 28, rec.)[2]

The Solicitor General recommends the reversal of the judgment appealed from and the acquittal of the appellant from the charge.

We have examined the records of the case and agree with the recommendations of the Solicitor General that the appellant is innocent of the charge against him. With regards to the testimony of the complainant that she stayed behind to defecate and did not join her brother and sisters in going to church to attend a bible study; that on her way to the church alone, she met the accused who said to her, "Bing, you go to the house of Mildred, I have something to tell you," and that she acceded and went with him to the designated house, where she was raped, the Solicitor General made this observation:

"x x x. It is most probable that this was not a chance meeting of the two, and that she had agreed with the appellant to have some intimate moments together, and with that purpose in mind, they sought the cover of the groundfloor of a desolated house and there, entered into copulation. x x x."[3]

"x x x is the fact that the complainant entered the lower portion enclosure of Mildred Casquete's house, with the appellant, of her own volition. If the appellant had just invited her to that house on the pretext of telling her something there, it would have been incredible that, seeing the place dark with no inmates, she would not have desisted and run away (pp. 10, 47, t.s.n., June 2, 1980). It is incredible that she, 14 years, a fifth grader and no longer a child (she had her menstruation when she was 12), upon seeing the condition of the place to which she was directed, would not have sensed the appellant's evil motive (pp. 17, 34, t.s.n., Id). It would be incredible that, instead of objecting to the appellant for bringing her to such place, she would still proceed to enter that dark and dingy enclosure where firewood was stored, just to hear that 'something' which appellant would tell her (pp. 42 & 43, t.s.n., Id). There is absolutely no evidence that she was dragged into the place; she accepted the appellant's invitation to go with him, and she walked quietly into it. And the only logical explanation for her presence thereat is that she agreed and yielded to appellant's invitation for intimacy, including sex."[4]

There is nothing in the records to show that the complainant shouted for help or made any outcry during all the time that she and the accused stayed underneath Mildred's house for almost one hour. According to the complainant herself, her house was just 50 meters away from the scene of the alleged rape and the barrio church was just 50 meters away, yet she never shouted for help, although she had all the opportunity to do so. Failure to shout despite the fact that outside help was available nearby renders doubtful her charge of rape.[5]

Also, nothing in the record shows that complainant reported the matter to the police authorities. The accused did not threaten her with bodily harm or coerce her into not reporting the matter to the authorities. She was only warned not to tell her mother or anybody else lest her father would learn about it and kill her. Such warning of the accused cannot give rise to the fear that is recognized by the courts as a valid and effective deterrent to any action on the part of sex victims of bringing the commission of the crime to the knowledge of the authorities. Moreover, the warning was made after the incident, and therefore, this could not in any way coerce the complainant to submit to the desires of the accused. Complainant gave as reason for her failure to report to the authorities the fear that her father would kill her. Why would her father kill her if she was really abused? It is most likely that her fear of her father was impelled by none other than guilt that she had willingly indulged in sex with a relative.

Likewise, there is no showing of any force employed by the accused or resistance from the complainant in the

perpetration of the sexual act. The complainant testified as follows:

"Q. You stated when your two legs were pinned, you struggle; after that what happened?

A. Then after that he took off my pants.

"Q. How about your panty?

A. He also took off my panty.

"Q. And when your pants and panty were already off or withdrawn what happened?

A. He also took off his pants.

"Q. Can you demonstrate to the Honorable Court how he was able to take off his pants in such a way that he was pinning your legs?

A. He stood up.

"Q. And you did not run away when he stood up?

A. How could I ran away when the house of Eyay Mildred is surrounded with fence and he (appellant) was standing on the door.

"COURT:

But did you stood up?

"WITNESS:

No, your Honor.

"COURT:

You did not stand up?

"WITNESS:

I did not stand up, your Honor, because Edwin Loreda told me if ever I stood up he will again box me on the mouth.

"FISCAL:

"Q. After Edwin Loreda was able to take off your panty, what happened?

A. Then he lie on top of me."[6]

It is obvious from the foregoing testimony of the complainant that she did not offer any resistance to her alleged assailant during the entire time of the alleged rape nor show any semblance of determination to run away when she had the chance to do so especially when the accused stood up to take off his clothes. In fact, she never tried to run away.

On the contrary, the evidence for the prosecution shows that complainant consented to the realization of the sexual act. Complainant testified that the accused's penis was quite big and for which reason it took the latter a long time to insert the same into her vagina. Complainant also said that she did not wiggle her buttocks and that she even jerked upward as she felt pain when he inserted his penis into her vagina.[7] It is thus difficult to imagine how the sexual act was realized in this manner without the complainant's cooperation.

The Solicitor General gave a satisfactory explanation for the filing of the complaint, to wit:

"Why then the charge of rape? The reason is simple. When the complainant's father, Maximo Bau-tista, arrived from Zamboanga City on May 7, 1979 he found complainant pregnant, and although he and appellant's parents had agreed to the marriage between appellant and complainant, Maximo, for some undisclosed reason, backed out (pp. 4, 10, 24 & 30, t.s.n., March 26, 1980). Instead a complaint for rape was filed against the appellant on June 13, 1970. No doubt, this is a vengeful move by Maximo against appellant for impregnating her daughter who later suffered an abortion." [8]

The lower court convicted the accused of the crime charged mainly on the testimony of the complainant. The records however show that complainant's testimony, aside from being uncorroborated, is doubtful, unreliable, con-tradictory, and insufficient to support such conviction. When asked whether she cried during the time that the accused was having sexual intercourse with her, she cate-gorically declared on cross-examination that "during all the time I was under Mildred's house with the accused I did not cry". Then she said, "while Edwin was lying on top of me and making push and pull movements I was cry-ing inasmuch as I felt pain." [9] From the foregoing testimony of the complainant, We are made to believe that the complainant cried not because she was coerced into the act, but because of the size of the accused's penis which hurt her when it entered her sex organ.

It has been said that for the lone and uncorroborated testimony of the offended party to be sufficient to con-vict for the crime of rape, it must be clear and free from any serious contradictions.[10] Here, complainant's contradictions on vital matters destroyed her testimony that she was a victim of sexual assault.

WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE and another one entered ACQUIT-TING the appellatant of the charge against him. With costs de oficio. SO ORDERED.

Makasiar, (Chairman), Aquino, Guerrero, Abad Santos, Escolin, and Cuevas, JJ., concur.

[1] pp. 59-61, Rollo.

[2] pp. 5-7, Decision.

[3] p. 63, Rollo.

[4] p. 62, Rollo.

[5] People vs. Astacio, 111 SCRA 527, L-54221, January 30, 1982.

[6] pp. 12-13, t.s.n., June 2, 1980.

[7] pp. 52-55, t.s.n., June 2, 1980.

[8] pp. 71-72, Rollo.

[9] pp. 46-47, t.s.n., June 2, 1980.

[10] People vs. Clarin, 108 SCRA 680.

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