

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. NESTOR GANDUMA, RESPONDENT.

G.R. No. 64507. April 25, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The accused-appellant, Nestor Ganduma, was convicted of the crime of rape and sentenced to suffer the penalty of reclusion perpetua and to indemnify the victim, Eva Cornista, for damages in the amount of P5,000.00 in a decision rendered by the Regional Trial Court of Leyte through the Honorable Judge Fortunato B. Cuna.

The lower court's decision was based on the testimonies of the following witnesses for the prosecution: Eva Cornista, the alleged offended party, Eugenia Anano, Cornista's aunt, and Dr. Virgilio Gernale, Cornista's examining physician. The testimonies of the foregoing witnesses proffered to establish the following facts:

At about 3:00 in the afternoon of September 8, 1980, while Eva Cornista, a 15-year old lass, was attending to her two brothers aged three and one at the yard of her house, the accused-appellant aged 21 years old, passed by and suddenly pointed a bolo at the girl's breast. Threatening the girl with death if she shouted, the accused-appellant dragged her to the bushes which was about 10 meters from her house, then pushed her to the ground. When Eva fell face upward, the appellant placed himself on top of her. Still holding the bolo with his right hand, and pointing it at the girl's breast, the appellant removed the girl's underwear, then his trousers with his left hand, and successfully had carnal knowledge of her. Eva screamed and this was heard by her aunt Eugenia. Responding to the scream, Eugenia proceeded to the place where she witnessed the appellant sexually abusing Eva. Surprised, the appellant picked up his clothes then fled.

The examining physician testified as to the presence of some linear abrasions on the inside of the girl's left thigh, the prominence of rugosities in and the laxity of the vaginal wall. The girl's hymen was, however, found intact as it was flexible. The physician further testified that the girl might actually have had sexual intercourse near or at the time of the commission of the crime of rape.

On the other hand, the appellant in his testimony declared that Eva was his sweetheart, their love affair having started some two years before the alleged crime happened, that is, when the appellant was still employed as a helper in the household of Eva. The appellant's employment was terminated sometime later by Eva's father because of his (appellant's) failure to pay the amount of P50.00 loan. On the day of the alleged crime, the appellant testified, he went to Eva's house upon the invitation of the latter. When asked how the invitation was relayed to him, the appellant declared that Eva called his name and beckoned him with her hand towards the direction of her house. (The houses of Nestor and Eva were some 25 meters apart.) As soon as Nestor arrived at the house, the two began sharing intimacies in the sala until the latter suggested that they should not do it at her house because her "father might see." Both, thus, proceeded to the bushes where they continued kissing and caressing each other. Eva later suggested that they undress. It was while they were removing their clothes that Eugenia Anano, Eva's aunt, surprised them. Nestor recalled Eugenia's statement, "You Eva xxx, that is what you

are doing whenever your parents are away. I am going to tell your parents about this." Thereupon, Eva urged the defendant to leave saying, " Nestor, you go ahead of me because we will not stop if you will not leave me"

This case is now with us on appeal. The appellant assigned the following errors:

- That the decision of the trial court was rendered without jurisdiction;
- That the decision of the trial court is contrary to law and therefore null and void.

The appellant anchors his appeal on the alleged absence of a complaint as required by Art. 344 of the Revised Penal Code. He does not dispute the findings of fact of the trial court. If, indeed, there was no complaint, such would have been ground enough for the acquittal of the accused. The records of the case; however, show that there was indeed a complaint signed by Eva Cornista dated September 26, 1980.

While the findings of facts here are not disputed by the appellant and his defense of an alleged procedural infirmity is now overthrown, we nevertheless reverse the judgment of the lower court on the ground of reasonable doubt.

We are not unmindful of the fact that ordinarily, the question of credibility is for the trial court to resolve. But when there are circumstances on record that point to the possibility that the appraisal of the evidence by the trial court was tainted, this Court has the duty to weigh the evidence anew and reverse the decision if need be. As Justice Malcolm said in *People v. Otero*: [1]

" After everything is said and done, we come back, as we invariably do in cases of this nature, to a recognition of the rule that the Supreme Court will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weigh and influence, which has been overlooked or the significance of which has been misinterpreted."

A thorough evaluation of the records of the case discloses certain matters in the testimonies of the witnesses for the prosecution which, to our minds, render doubtful the commission of the crime charged. This being the case, reversal is but proper.

- We are not convinced that the complainant offered a tenacious resistance to the alleged sexual assault.

While she was being dragged to the bushes, which was some 10 meters away, she allegedly struggled to free herself from the grip of the accused-appellant. It was for this reason that she fell twice and sustained bruises on her knees and left arm. But while all these allegedly happened to her which, undoubtedly, must have caused her great pain, she never shouted, cried nor even whimpered. For if she did, her aunt, witness Afiano, would have heard her at that very moment, considering that Anano was only some distance away (35 meters).

Moreover, the examining physician's findings pointed to the presence of some linear abrasions inside of the complainant's thigh but none on her arms or legs. The said bruises, if there were indeed any, could not have been missed by the physician for he had the duty to examine physically the complainant. Neither could the alleged bruises have already healed for the physical examination was conducted barely a week after the alleged crime of rape was committed. Physical evidence being of the highest order, this absence of external injuries belies the complainant's testimony that she was dragged to the bushes thus rendering her credibility in doubt.[2] It is, therefore, a possibility that the complainant might not actually have tripped while she was allegedly being dragged to the bushes against her will. It is more plausible that she went with the appellant to the bushes willingly.

- As to the presence of the linear abrasions of 3.0 cm. in length found inside the left thigh of the complainant, we cannot appreciate those as indications of force and violence. As pointed out by the counsel for the appellant, the wounds may have been caused by blades of grass or by some hard object while the complainant

and the appellant were caressing each other by the bushes. Nonetheless, the wounds were too superficial to corroborate the complainant's allegation that she resisted the appellant's sexual advances which compelled the latter to use brute force. In a rape case, the testimony of the complainant must be corroborated by physical evidence showing use of force.[3]

- The testimony of Eugenia Anano does not show that the crime charged was committed. We note the fact that Anano merely declared that she surprised the appellant and the complainant while the former was on top of the latter doing the push and pull motion. She never said anything about a struggle.

xxx xxx xxx

Q And when you arrived at that place, what did you see there, if any?

A I saw Nestor Ganduma without lower garment, without pants,

xxx xxx xxx

Q

Now you said that when you reached that place you saw Nestor Ganduma without pants and making a push and pull motion on Eva Cornista, now, when you arrived there what was the position of Eva Cornista?

A Lying down face upward.

Q What was the position of Nestor Ganduma?

A He was on top face downward making a push and pull motion.[4]

Nor did the witness mention seeing a knife or any deadly weapon at the scene of the supposed crime at the moment of discovery and even when the appellant supposedly fled.

xxx xxx xxx

Q Now after seeing that to Nestor Ganduma, what happened?

A

He stood up immediately and brought along his pants and ran away, picked up his pants and ran.[5]

xxx xxx xxx

Moreover, witness Anano heard only one shout ("ouch or agui") which may actually not have been a cry of resistance or a cry for help but a cry of discomfort or pain naturally felt by a woman who was experiencing sexual intercourse in such venue.

- If the appellant indeed entertained lustful intentions towards the complainant and the latter never reciprocated any advances that he must have made, he would have committed the crime charged while he was still employed in the complainant's house. For then, the satisfaction of his sexual urges through the use of force was easier to accomplish considering that both were then living under the same roof. Certainly, there were many instances when only the two of them were left in the house and what better opportunities did he have than those moments when he could have pounced upon the unsuspecting complainant and abuse her sexually.

But as the prosecution would like us to believe, it was only months after the services of the appellant were terminated that the latter decided to force himself upon her. And the means he allegedly employed to achieve his end was by brute force, highly unusual for a man who had known, and in fact, served the woman for years. We are likewise baffled by the suddenness of the alleged attack. From nowhere, the appellant appeared before the complainant's eyes and for no apparent reason but lust which must have seethed all those years, pointed a bolo at the complainant's breast, dragged her to the bushes and thereupon, ravished her. Again, we say that such was unusual. And when the alleged crime was discovered by Anano and the appellant fled from the scene of the crime, we find it, likewise, unusual that the appellant never even bothered to hide in order to escape the ire of complainant's father as well as the strong arm of the law.

From the preceding, we can but conclude that the complainant and the appellant, as the latter claims, were lovers and that the sexual act was but a product of their passions inflamed. Their physical accessibility for each other borne out by the fact that both lived under the same roof for quite some time must have given rise to what developed as sexual intimacy. This is not an uncommon result of mere propinquity.

While this Court has, in numerous cases, affirmed the judgments of conviction rendered by the trial court in rape charges especially where the offended parties were very young and presumptively had no ill motives to concoct a story if only to secure indictments for a crime as grave as rape, this Court likewise reversed judgments of conviction and acquitted the accused when there were strong indications pointing to the possibility that the rape charges were merely motivated by some factors except the truth as to their commission.

In *People v. Berdaje*,^[6] this Court considered the case an exception to the general belief that a 15-year old girl would not expose herself to the ordeal of a public trial if she were not motivated solely by a desire to have the culprit who had ravished and shamed her placed behind bars. The evidence in the said case showed that the alleged victim voluntarily submitted to the sexual intercourse. She was motivated to file the case if only to escape the indignation of her family as well as the social disrepute that goes with the act.

Also, in *People v. Lopez*,^[7] this Court, speaking through the then Chief Justice Fernando, acquitted the accused of the crime of rape of a 13-year old girl because of want of force and intimidation as borne out by the fact that the girl, in obedience to the wishes of the appellant, submitted herself to him. Furthermore, this Court found that the filing of the charge was motivated by an ulterior motive, i.e., that the alleged victim bore a grudge towards the accused because he courted her elder sister.

In this case, we cannot but suspect the motive that impelled the complainant to file the rape case. Suffice it to say that no less than the complainant's aunt discovered the appellant and the complainant while in sexual congress. Expectedly, the matter was reported by Anano to the complainant's parents. More because of fear for her father's wrath for her having carried on a relationship with a man who was not only her family's former helper but also the man her father disliked utterly, as well as the social consequences, than for any affection that she may have had

for the appellant, the complainant had to report to her father that she was sexually abused. Thus, this case for rape which saw the conviction of the appellant in the lower court.

Considering the above circumstances, we are, to a great extent, doubtful whether the crime charged was, in fact, committed. The prosecution failed to establish the guilt of the accused beyond reasonable doubt. Accordingly, the constitutional presumption of innocence not having been successfully overcome, it should prevail. The appellant, hence, is entitled to acquittal.

WHEREFORE, the decision of the lower court dated April 18, 1983 is REVERSED and the appellant ACQUITTED of the crime of rape. With costs de oficio.

Yap, C.J., Paras, and Padilla, JJ., concur.

Melencio-Herrera, J., dissenting.

[1] 51 Phil. 201.

[2] People vs. Bardaje, No. L-29271, Aug. 29, 1980, 99 SCRA 388; People vs. Royeras, No. L-64849, June 29, 1984, 130 SCRA 259.

[3] People vs. Relacion, 95 SCRA 369.

[4] TSN, March 3, 1981, No. L-46521, January 22, 1980, 38-39.

[5] Id.

[6] No. L-29271, August 27, 1980, 99 SCRA 388.

[7] No. L-45084, August 31, 1984, 131 SCRA 548.

DISSENTING:

MELENCIO-HERRERA, J.,

It is my view that appellant's guilt has been proven beyond reasonable doubt.

- The testimony of the complainant to the effect that she resisted the advances made by appellant, compelling the latter to use brute force, is not negated by the fact that the examining physician failed to find any other external injury other than the presence of linear abrasions of 3.0 cm. in length inside her left thigh. In fact, those linear abrasions sufficiently indicate the use of force upon the victim. They would not have been there if the sexual congress had been voluntary.

The absence of bruises on the victim's arms and legs when she was physically examined may be attributed to the fact that by their very nature, bruises are superficial and can disappear within a week.

Besides, the fact that the medical certificate shows no external signs of physical injuries does not negate the commission of rape [People v. Monteverde, 142 SCRA 668; People v. Bawit, L-48116, February 20, 1981; People vs. Dadaeg, L-37798, July 15, 1985, 137 SCRA 500]. To consider the existence of the crime, it is only necessary that the force used by the guilty party be sufficient to consummate his purpose (People vs. Budol, 143 SCRA 241, G.R. No. L-48010, July 31, 1986).

- It is inaccurate to state that the victim "never shouted, cried nor even whimpered. For if she did, her aunt, witness Anano, would have heard her at that very moment, considering that Anano was only some distance

away (35 meters,)." (p. 5 Decision). The fact of the matter is that the victim screamed for which reason the aunt heard her. The latter did not merely chance upon the appellant and the victim. Neither could the aunt have said anything about a struggle because she was not around at the initial stages. She arrived at the scene when the act was already being consummated.

- Appellant's claim that he and the offended girl are sweethearts is barren for not having been corroborated by even close acquaintances (People vs. Calubag, 141 SCRA 371. February 19, 1986).

- In the final analysis, the Trial Court's findings on the credibility of witnesses is entitled to the highest respect for it had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies (People vs. Budol, supra). The recognized exceptions to the rule are inexistent in this case.

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