

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. CEFERINO LUNGAYAN, ACCUSED.

G.R. No. 64556. June 10, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.

Rape is a serious offense against chastity. Its essential element is involuntariness. More often than not, the credibility of the offended party is vital. Failing in this, the prosecution cannot make out a case.

This is demonstrated in a review of the conviction of the accused Ceferino Lungayan by the Regional Trial Court (RTC) of Echague, Isabela for the crime of rape, who was thereby imposed the penalty of reclusion perpetua with all the accessory penalties provided for by law, and ordered to indemnify the victim Agripina Juan Vda. de Garzota in the amount of P12,000.00 for moral damages without subsidiary imprisonment in case of insolvency, and to pay the costs, in a decision dated April 8, 1982.

The evidence for the prosecution show that the complainant Agripina Juan Vda. de Garzota, then 52 years old and a widow, was asleep inside the room at their market stall located in the public market of barangay Oscariz, municipality of Ramon, Isabela, on the evening of January 20, 1980. With her were her two married daughters Silveria and Leticia, the latter's husband Berting Garcia and the children of said daughters. At about 10:00 o'clock of that evening, Silveria heard someone knock at their door and when she opened it she saw the accused who was then the barangay captain of Barangay Oscariz. He asked Silveria if her mother was in. She answered in the affirmative and added that her mother was asleep. Nevertheless, the accused entered the room where complainant was sleeping and woke up the complainant. He invited her to join him to observe the persons drinking wine in the market stall identified as Linda's canteen in violation of the barangay ordinance prohibiting the same after 10:00 o'clock in the evening.

Complainant went with the accused to the said canteen which was only one market stall away. They stood about two meters away from the open door of the canteen, the electric lights of which were open inside. They stayed at the place for ten minutes standing side by side without talking to each other. They were observing the people drinking in the canteen. Suddenly the accused grabbed both hands of complainant so complainant reacted by shouting very loud only once. Her cries could not be heard by the people drinking inside the canteen because of the loud stereo player. The accused slapped her and brought out his gun which he pointed at her breast threatening to kill her if she creates any noise. The accused then pulled her and she fell on the ground hitting her head on the pavement so she lost consciousness, sustaining injuries on the palms of her hands.

When she regained consciousness after a short while, she was dragged by the accused towards the banana grove near the market. She managed to stand and walk while being dragged. The accused then carried her body across the canal and dropped her on the ground causing her to fall flat on her belly and her fingers were again injured by the broken glasses on the ground. She could not free herself nor shout for help because of the threat to her life.

After she fell flat on the ground, the accused held her and pressed her down and he proceeded to remove her skirt

and shorts and thereafter her blouse leaving her exposed naked with her back, to the ground. She was not wearing any panty or brassiere then. Besides pressing her down the accused stepped on her thigh with his left foot as he went on top of her naked body. Then he stood up warning her not to make any noise and he removed his pants and tee-shirt after which he again went on top of her naked body holding her hands. Pointing the gun at her breast anew, the accused repeated his threat to kill her if she resisted. Then the accused started mashing her breast and succeeded in having sexual congress with the complainant. She felt his penis penetrating her vagina followed by a push and pull movement for less than an hour, until she felt semen emitting from his penis and entering her body. After a while, he stood up, put on his pants and warned her not to tell her children about what he had just done to her or ask for help for he will kill her. He left her in tears. After the accused had gone, complainant put on her shorts and shirt which were muddy as it previously rained that day and went home still crying.

When she reached home about 12:00 midnight, Silveria asked her what happened and she revealed that the accused abused her. When Silveria pressed for details, the complainant replied that she will tell her the following morning.

As she promised, the next morning complainant told Silveria everything that happened to her and thereafter she proceeded to Santiago town and reported the incident to Mr. Segundo Maylem, post commander and Executive Vice Chapter Commander, VFP Southern Isabela, from whom she sought assistance. She was advised to submit herself to an investigation and medical examination. On the same day, the complainant was examined by Dr. Normita Villarico, chief of the Cagayan Valley Sanitarium Hospital. After due investigation by the PC, a complaint for rape was filed signed and sworn to by complainant in the Municipal Circuit Court of Ramon, Isabela against the accused.

In appealing his conviction, the accused, through counsel assailed the credibility of complainant and interposed the defense of denial and alibi. However, by way of rebuttal of the People's

brief filed by another collaborating counsel for appellant, the failure of the prosecution to establish involuntariness on the part of the victim was emphasized.

The appeal is impressed with merit.

There is no question that there was sexual congress between the complainant and the appellant on that fateful evening. The medical findings and the analysis of the court a quo to this effect is well-founded. However, the environmental circumstances of the case militates against the claim of the complainant that the appellant employed force or intimidation in the perpetration of the said sexual act.

Complainant was a widow, 52 years of age. She had been married three times. She was not that innocent about the world. When appellant invited her at 10:00 P.M. to step out of her house, she should have declined. Going out alone with a man late in the evening is not in good taste nor safe even if the one who invited her was the barrio captain. Instead, she should have suggested that the appellant invite some other person for the purpose.

But obviously, the appellant was quite intimate with the complainant. When he knocked at her door and was allowed entry, he proceeded into the bedroom of complainant and woke her up himself.

Complainant went with the appellant in her shorts. She took no precaution as any discreet woman would do by at least putting on her panty and a brassiere instead of stepping out with the appellant in her shorts.

For about ten minutes, they were together side by side watching from a distance the people who were drinking at Linda's canteen. Then suddenly, the appellant allegedly held her two hands. She allegedly shouted for help but only once. If she could not be heard as her voice was drowned by the blaring stereo player, she should have

shouted louder again and again. Better still, she should have ran towards the canteen which was just two meters away or to her residence which was one market stall away. After allegedly shouting once she kept her peace.

She was allegedly dragged although she admits she willingly walked along. She was allegedly carried across the canal by the appellant although she was taller and definitely bigger than appellant.

When she fell on the ground, the appellant removed her shorts and skirt without difficulty. She offered no resistance. Even as he stood up to remove his pants she did not attempt to stand up to escape nor to shout for help. There was no sign of struggle or resistance. Then the appellant put his penis into her vagina penetrating her. They had sexual intercourse for almost one hour. She even felt the semen of appellant as it entered her body. Not a whimper, not a sound from the complainant was heard. She claims she was afraid due to the gun of appellant and his threats. She did not even describe the type of gun the appellant threaten her with several times. Nor had the prosecution shown appellant ever had a gun. All indications show that she submitted to his advances.

The incident happened at about 10:00 o'clock in the evening. She went home only at about 12:00 o'clock that evening. Apparently, she still moved around or spent sometime alone for about one hour. She must have contemplated what to do with her clothes all muddy. When she reached home she was confronted by her daughter as to what happened. She had no choice but to tell her that she was abused by appellant but she was not prepared to reveal everything. She promised to tell all the details to her daughter the following day. She thought about her predicament the whole night. She had no choice. She must have to tell everything the following day.

As the Court sees it, what actually happened in this case, is that when the complainant went out with the appellant that evening, she was aware of the risk of going out alone with a man for a reason that is far from unavoidable. They were close and side by side for sometime, allegedly watching the drinking session at Linda's canteen. They must have succumbed to the temptation of the flesh. One thing led to the other until they had sexual intercourse. Perhaps the complainant did not initiate or motivate the sexual interlude. In the least, she must have abetted it if not willingly submitted to the advances of the appellant.

Indeed, they were in ecstasy for almost one hour. Such mutual and passionate lovemaking can certainly not be characterized as involuntary. It was free and without any compulsion.

The appellant was 48 years old when the incident happened. To think that a younger man would rape an elderly woman of 52 years, widow, three times married, would be quite unusual. It is more probable that it was consensual.

The trial court considered the revelation of the complainant to her daughter Silveria of what happened to her when she returned home as part of the *res gestae*. It is important to stress that her statement must not only be spontaneous. It must also be made at a time when there was no opportunity for her to concoct or develop her own story.¹ As the Court observed the complainant did not immediately go home after the sexual encounter. She took a walk. She spent sometime thinking of what to do. Her clothes were muddy. She had some bruises on her body and back because she was lying down on the ground during the sexual intercourse and their passionate interlude. She had enough time to make a decision on what will be the nature of her story. Her revelation cannot thus be categorized as part of the *res gestae*.

Considering all the facts and circumstances of the case, the Court finds that if there was any sexual congress between appellant and complainant, it was upon their mutual consent. There was no compulsion or force. The version of the complainant is far from credible. A verdict of acquittal is in order.

WHEREFORE, the judgment appealed from is REVERSED AND SET ASIDE and another judgment is hereby rendered ACQUITTING the appellant of the offense charged, with costs de oficio.

SO ORDERED.

Narvasa (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Section 36. Rule 130. Rules of Court; People v. Ricaplaza, 23 SCRA 374,384, 385 (1968).

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