

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS CANTURIA Y DEJITA, ACCUSED-APPELLANT.

G.R. No. 67598. October 11, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

It was Chief Justice Enrique M. Fernando who said in *People vs. Imbo*, L-36759, August 31, 1982, 116 SCRA 355, 356, that:

"The difficulty, recognized and acknowledged, in the decision-making process where the prosecution is for rape, arises from the fact that usually only the participants can testify as to the alleged sexual abuse. The accused may deny such an occurrence, put up the defense that he was somewhere else, or allege the consent on the part of the complainant. The court then is left with no choice but to exert the utmost effort to determine the likelihood that a sexual act did take place and under what circumstances. Such choice is not always easy."

There is, however, not much difficulty in this case because the complainant's identification of her assailant was supported by physical evidence furnished by the latter.

In Criminal Case No. 2574 of the Regional Trial Court of Legazpi City, JESUS CANTURIA was accused of rape said to have been committed as follows:

"That on November 10, 1982, about 3:00 o'clock in the morning, at Quimantong, Daraga, Albay, Philippines, within the jurisdiction of the Honorable Court, the above-named accused, with lewd design, entered the house of LANI M. NOCETE who was then alone with her 3-year and 6-month old children, by means of force and intimidation, and with the use of a deadly weapon, wilfully, unlawfully and feloniously did lie, and succeeded in having carnal knowledge of said LANI M. NOCETE, to her damage and prejudice." (Expediente, p. 1.)

The accused pleaded not guilty and after trial the court sentenced him as follows:

"WHEREFORE, judgment is hereby rendered pronouncing accused Jesus Canturia y Dejita guilty beyond reasonable doubt as principal of the felony of rape, and sentencing him to reclusion perpetua and to indemnify the offended party of the sum of P10, 000.00 as moral damages, and to pay the costs." (Id., p. 92.)

The case is now before this Court on appeal and as intimated above, the appeal must fail.

The evidence for the prosecution shows the following:

Lani Macasinag Nocete a 25-year old married woman, was sleeping with her two children of tender years in their house in Barangay Quimantong, Daraga, Albay, when at about 3:00 o'clock in the morning of November 10, 1982, a man she had not seen before entered the house. The man pointed a long bladed weapon at her neck and forced her to submit to his lust. He also said that he had many companions who surrounded the house. After he had satisfied himself the man left.

Lani was able to recognize the man who raped her "because he had with him a flashlight, I saw his face and he

had a tatoo." The tatoo was on the left arm just below the shoulder and it read "Vidal."

The day after the incident, Lani reported the matter to Barangay Councilman Loreto Lisay who gathered information on the man who raped her. He found out that he lived at Kilometer 7. On November 15, 1982, Councilman Lisay saw the accused enter the Elta Theater in Daraga. He immediately fetched Lani and sought police assistance. Patrolmen Tomas Riñon, Damian Arevalo and Rogelio Azupardo went with them to the theater where Lani pointed to the accused as her rapist. He was Jesus Canturia and when the left sleeve of his shirt was raised they found a tatoo thereon reading "NIDAD."

Canturia's version is as follows:

"ATTY. MATA (defense counsel)

Q What can you say as to this charge by Lani Nocete against you?

A I do not know anything about that.

Q Why, that evening of November 9, 1982, where did you pass the night?

A In my own house.

Q Where is your house located?

A There at Sipi, Kilometro 7, Daraga, Albay.

Q In whose land that house of yours was constructed which you said where you passed the night on November 9, 1982?

A

Melchor Maceda.

Q

How are you related to Melchor Maceda?

A None, sir.

Q Who look after this land after your house was constructed?

A I, sir.

Q So you are a tenant of Melchor?

A Yes, sir.

COURT

Q One question. In what barrio is your house or is that house where you passed the night on November 9, 1982 away from Quimantong, Daraga, where you allegedly raped Lani Nocete, how far?

A

I cannot say as to how far the distance is because I do not know the place where Lani Nocete resides.

Q Now, what barrio where you passed the night is located?

A At Sipi.

Q Sipi and Quimantong are adjacent barrios and separated barrios?

A Probably adjacent or near to each other.

Q Now, if you will take a walk from your place where you passed the night to the house of Lani Nocete how long will it take you to travel the distance?

A I cannot estimate because I do not know the house of Lani Nocete.

COURT

Continue.

ATTY. MATA (continuing)

Q You seem to be a stranger of Sipi and Quimantong, you are a native of what municipality?

A I resided at Barrio Lourdes, Pilar, Sorsogon.

Q Prior to your transferring to Sipi?

A Yes, sir.

Q When have you just transferred to Sipi?

A July 5, 1982." (TSN, pp. 87-89.)

The nitty-gritty issue raised in the assignment of errors is the credibility of witnesses. The trial court which was in

a better position than this Court to make the determination believed Lani and not the accused. We have gone over the record of the case and there is nothing in it that would justify disturbing the trial court's finding. Lani testified in a forthright manner; she had no reason to falsely accuse the appellant who was a total stranger to her. On the other hand, the appellant's alibi must fail because he was positively identified as the culprit by the complainant. The identification was fortified by the tatoo on the appellant's left arm. True it is that there was no complete congruence of the letters reported by Lani and those discovered on the appellant but substantial identity under the circumstances was sufficient. Appellant's alibi must also fail because it was not corroborated. He was the lone witness for the defense. Finally, Barangay Sipi, where the appellant lived, and Barangay Quimantong, where Lani lived, are adjacent to each other so that it was not physically impossible for the accused to have been at the site of the crime at that time.

WHEREFORE, the judgment of the trial court is hereby affirmed with the sole modification that the indemnity is increased to P20,000.00. Costs against the appellant.

SO ORDERED.

Aquino, (Chairman), Concepcion, Jr., Escolin, Cuevas, and Alampay, JJ., concur.

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