

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO PASCO Y SANTOS, ZOSIMO FLORESCA @ BONG ALCANTARA, GREGORIO CUANIO, AND REYNALDO AVENDAÑO, ACCUSED-DEFENDANTS. VIRGILI...

G.R. No. 68520. January 22, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

In an amended information dated July 13, 1982 filed with the then Court of First Instance of Rizal, Branch XXXIV, Caloocan City (now Regional Trial Court, Branch CXXIV of Caloocan City), Reynaldo Avendano, Zosimo, Floresca alias "Bong Alcantara", Gregorio Cuanio and Virgilio Pasco, were charged with the crime of rape committed as follows:

"That on or about the 29th day of September 1979, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another and all of them mutually helping and aiding one another, armed with a bladed weapon and by means of force and intimidation upon the person of one Regina Villanueva y Torres did then and there wilfully, unlawfully, and feloniously have carnal knowledge of the latter one after the other against her will and consent." [1]

During arraignment, all four accused pleaded not guilty. Gregorio Cuanio disappeared thereafter and was tried in absentia.[2] On March 26, 1984, the court a quo rendered a decision finding all the accused guilty beyond reasonable doubt of the crime charged in the information.[3] The dispositive portion of the decision reads:

"WHEREFORE, premises considered, this Court finds accused Reynaldo Avendano, Virgilio Pasco y Santos, Zosimo Floresca alias "Bong Alcantara" and Gregorio Cuanio guilty beyond reasonable doubt of the crime charged and thereby sentences them each to reclusion perpetua and to pay the costs.

"SO ORDERED." [4]

Reynaldo Avendano, Virgilio Pasco y Santos, and Zosimo Floresca alias "Bong Alcantara" interposed the present appeal. Virgilio Pasco y Santos later withdrew his appeal in a Motion for Withdrawal of Appeal dated October 31, 1984.[5]

The factual findings of the lower court are:

At about 8:00 o'clock in the evening of September 29, 1979, Regina Villanueva, then seventeen (17) years of age, was walking along Manapat Street, Barangay Tanong, Malabon on her way home from Aling Mila's Store when a tricycle being driven by Reynaldo Avendano suddenly stopped in front of her. Inside the tricycle were Zosimo Floresca alias "Bong Alcantara" and Virgilio Pasco.

Avendano told Regina that somebody would like to talk to her at Leono Street, Consunji Subdivision, Malabon,

also popularly known as "Desyerto," but the latter refused to go with him. At this juncture, Floresca and Pasco immediately alighted from the tricycle and pulled Regina into it. Regina shouted for help but was stopped from further doing so because one of her abductors pointed a knife at her with this warning: "Sige, sumigaw ka, kapag hindi isinaksak ko ito sa iyo". Thereafter, the tricycle sped towards the "desyerto" at the Consunji Subdivision in Malabon with Regina on board. Upon reaching "desyerto" where the group was joined by Cuanio, the four men took Regina into the grass-covered lot or "talahiban" and took turns in raping their helpless victim. As a result, the latter bled profusely, soaking her pants and t-shirt heavily with blood.

As Regina reached home, she was met by her mother, who seeing her condition, asked her what happened. Regina told her mother that she was raped by the four accused. This incident was immediately reported to the police authorities. Regina was subsequently examined by a medico-legal officer of the National Bureau of Investigation (NBI), Dr. Valentin T. Bernales on October 1, 1979. The examination disclosed the following findings contained in a report entitled Living Case No. MGI-79-683:

"Pubic hairs, fully grown, moderate. Labia majora, gaping, Labia minora, coaptated. Fourchette, tense with linear laceration at the median line. Vestibular mucose, pinkish with contusion, purplish, right side, from 2:00 to 4:00 o'clock positions. Hymen, thick, short, serrato-annular with superficial healing laceration, at 3:00 o'clock position and complete deep healing laceration, with fibrin formation at 6:00 o'clock position, which bleeds upon slight manipulation. Hymenal orifice, admits a tube of 2.5 cm. in diameter with marked resistance. Vaginal walls, tense."

CONCLUSIONS:

"1. The above described physical injuries were noted on the body of the subject at the time of examination.

"2. Genital findings present, compatible with recent sexual intercourse with man."[6]

Appellant Floresca, however, faults the court a quo with the following errors:

1. THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE COMPLAINANT AND HER MOTHER DESPITE THE PRESENCE OF SELF-CONTRADICTIONS, INCONSISTENCIES AND IMPROBABILITIES IN SAID TESTIMONIES AND OF OTHER FACTORS CASTING DOUBT THEREON, AND DESPITE A MOTIVE ON THEIR PART TO FALSIFY THE TRUTH;
2. THE LOWER COURT ERRED IN APPLYING CERTAIN DECISIONS OF THE SUPREME COURT ON RAPE IN THIS PARTICULAR CASE;
3. THE LOWER COURT ERRED IN NOT HOLDING THAT THE PROSECUTION'S EVIDENCE IS NOT SUFFICIENT TO OVERCOME THE PRESUMPTION OF INNOCENCE IN FAVOR OF HEREIN APPELLANT;
4. THE LOWER COURT ERRED IN RELYING ON THE ALLEGED WEAKNESS OF HEREIN APPELLANT'S DEFENSE AND NOT ON THE STRENGTH OF THE PROSECUTION'S EVIDENCE;
5. THE LOWER COURT ERRED IN NOT HOLDING THAT THERE IS REASONABLE DOUBT THAT HEREIN APPELLANT COMMITTED THE CRIME CHARGED AGAINST HIM IN VIEW OF THE SERIOUS FLAWS IN THE PROSECUTION'S EVIDENCE AND IN VIEW OF THE PRESENCE OF CONFLICTING VERSIONS ON THE SUBJECT INCIDENT;

6. THE LOWER COURT ERRED IN CONVICTING HEREIN APPELLANT.

On the other hand, appellant Reynaldo Avendaño raised only one assignment of error allegedly committed by the trial court:

THE TRIAL COURT ERRED IN FINDING APPELLANT REYNALDO AVENDANO GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE, AND IN NOT ACQUITTING HIM UPON THE GROUND THAT HIS GUILT HAS NOT BEEN ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT.

The foregoing assignments of errors boil down to the basic issue of whether or not the guilt of the four (4) accused were proven beyond reasonable doubt so as to justify their conviction of the crime for which they were charged.

Article 335 of the Revised Penal Code defines the crime of rape and provides for its penalty. The elements of rape pertinent to this case are: (1) that the offender had carnal knowledge of a woman; and (2) that the act is accomplished, among others, by using force or intimidation.[7]

The first element of carnal knowledge is not denied by Reynaldo Avendaño, but he claims that the same was a free and voluntary act between him and Regina. Thus, the defense evidence on what transpired that fateful evening of September 29, 1989 rested on the theory that the sexual dialogue was only between Reynaldo and Regina and that the same was with the consent of the latter. The stand taken by the defense was narrated by the trial court as follows:

"In the evening of September 29, 1979, Virgilio Pasco went to the house of Reynaldo Avendano to inform him of the desire of Regina Villanueva to talk to him (Reynaldo Avendano). Going out of his residence, Reynaldo Avendano went with Regina Villanueva, whom he had known a month before, to the "desyerto" along Leono Street to converse. Arriving thereat, Regina Villanueva told Reynaldo Avendano to face the other direction, to which he obliged. Later, Regina Villanueva told Reynaldo Avendaño to remove his clothes — and the latter accommodated the former's yearning. With his attire removed, Reynaldo Avendano was directed by Regina Villanueva to turn about-face toward her — and moved by the weakness of the flesh as the latter (Regina Villanueva) was already totally nude, the former (Reynaldo Avendaño) did what a man would naturally do under the circumstances. The other accused — Zosimo Floresca alias "Bong Alcantara", Virgilio Pasco and Gregorio Cuanio — were not around during the Sexual dialogue between Reynaldo Avendano and Regina Villanueva." [8]

The version of appellant Reynaldo Avendaño is at best incredible. He would make it appear that he was the one lured by the complainant into a secluded place to have sexual intercourse and that he was in effect forced to prove his masculinity. The complainant has not been shown to be of such depraved character as to be capable of the pictured sexual perversity. The Court rejects the version of appellant as it offends sensibility.

There is no question then that Regina Villanueva underwent a sexual experience as admitted by Reynaldo Avendaño himself and as shown by the findings of the NBI medico-legal officer in Living Case No. MGI-79-683.

Appellant Zosimo Floresca, however, denies having had sexual contact with the complainant. Instead, he submits his alibi that during the time the alleged crime was being committed, he was at his residence in No. 28 Adante St., Tanong, Malabon celebrating with some guests the birthday of his niece. He claims that he was there from around 5 P.M. and never left his house from such time until the following morning except to buy drinks from neighboring store.[9]

The defense of alibi interposed by accused-appellant Floresca cannot prevail over his positive identification by the complainant as one of those who sexually abused her in conspiracy with his three co-offenders for it is

well-settled that alibi is one of the weakest defenses an accused can invoke. Easily lending itself to concoction and fabrication, it must invariably be viewed with suspicion and may be considered only when established by positive, clear and satisfactory evidence. To be given credence, it must not only appear that the accused interposing the same was at some other place, but also that it was physically impossible for him to be at the scene of the crime at the time of its commission.[10]

In addition to the positive identification of Zosimo Floresca and Reynaldo Avendano by Regina Villanueva is her testimony that all four accused raped her one after the other, each acting in unison with the others in accomplishing the common design of gaining carnal knowledge of her. Thus, three of the accused forcibly brought her to the designated place, where the fourth joined them, obviously in accordance with a previous plan. The four helped each other in undressing her, after which each took turns in raping her. These concerted acts clearly and positively indicate the existence of a conspiracy among the accused.

For conspiracy to be appreciated, it is enough that at the time the offense was committed, the participants had the same purpose and were united in its execution as they may be inferred from the attendant circumstances[11] and as the time-honored phrase goes, in conspiracy, the act of one is the act of all. Therefore, they should all be held equally liable for the bestial act they have committed.

On the second element of force or intimidation, the number of offenders alone, four men against one helpless lass, is sufficient to establish the existence of force or intimidation without even considering the fact that a bladed weapon was used by the accused. It need not be over-emphasized that force or violence required in rape cases is relative. When applied, it need not be too overpowering or irresistible. What is essential is that the force used is sufficient to consummate the purpose for which the offender had in mind, or to bring about the desired result.[12] In fact, even the absence of external signs or physical injuries does not negate the commission of the crime of rape.[13]

In the case at bar, the alleged absence of bruises, contusions and abrasions in the body of the complainant may seem unnatural but the workings of a human mind when placed under emotional stress, are unpredictable and people react differently. In the given situation, some may shout, some may faint, and some may be shocked into sensibility while some may openly welcome the intrusion.[14]

Accused-appellants vigorously assert that complainant is not a credible witness considering the alleged inconsistencies and contradictions between her statements in her affidavit given to the police and those she gave on the witness stand relative to the manner she was abducted, the order and the length of time she was sexually abused by the accused, at what point in time she lost consciousness, and other minor details such as her age which has no actual bearing on the commission of the crime. The Court is of the considered opinion that these alleged inconsistencies do not detract from the credibility of the victim's testimony in its totality. "It is a matter of judicial experience that an affidavit, being taken ex-parte is almost always incomplete and often inaccurate, sometimes from partial suggestions, sometimes for want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory and for his accurate recollection of all that belongs to the subject."[15]

Testimonial discrepancies could be caused by the natural fickleness of memory which tend to strengthen, rather than weaken, credibility as they erase any suspicion of rehearsed testimony. It would perhaps have been more suspicious if complainant had been able to pinpoint with clarity or describe with precision the exact sequence of event.[16] The most candid witness oftentimes makes mistake but such honest lapses do not necessarily impair his intrinsic credibility.[17]

In rape cases, the exact sequence of startling events crowded into a brief period of time and productive of

excitement and confusion is often a matter of doubt even in the most honest and accurate memory, and in the reiterated narration of such occurrences even the most candid witnesses sometimes make mistakes and fall into apparently confused and inconsistent statements, which, however, should not affect their credibility.[18]

After examining the records of the case, We see no cogent reason to depart from the trial judge's conclusion that the accused are guilty as charged. The defenses of alibi and consent as raised by Floresca and Avendaño, respectively, crumble and lose ground vis-a-vis the positive identification and assertion made by the complainant.

The Court finds it hard to believe that complainant voluntarily and freely consented to have carnal knowledge with the accused-appellant Reynaldo Avendaño. When a woman testifies that she has been raped, she says all that is needed to signify that the crime has been committed. For no young, decent Filipino woman would publicly admit that she had been criminally ravished unless that is the truth, for her natural instinct is to protect her honor.[19]

Indeed and undoubtedly, Regina Villanueva underwent sexual experience against her will with the use of force and intimidation, not once, but four times in the hands of the four accused. The elements of conspiracy having been proven beyond reasonable doubt, a situation confronting the said accused-appellants wherein the guilt of one is the guilt of all, therefore, each of the accused is responsible not only for the rape he committed against Regina Villanueva but for all the other rapes committed by his companions, with whom he had conspired.[20] In other words, each of the accused-appellant is liable for four rapes which according to paragraph 3 of Article 335 of the Revised Penal Code is punishable by reclusion perpetua to death whenever the crime is committed with the use of a deadly weapon or by two or more persons. Fortunately for the accused, the death penalty had been abolished and reduced to life imprisonment in accordance with Article III, Section 19(1) of the 1987 Constitution.[21]

WHEREFORE, accused-appellants Reynaldo Avendano and Zosimo Floresca are each hereby found guilty beyond reasonable doubt of four (4) crimes of rape and are sentenced to suffer four (4) penalties of reclusion perpetua. They are ordered to indemnify jointly and severally the victim Regina Villanueva in the amount of Twenty Thousand Pesos (P20,000.00) in each of the four (4) crimes or a total of P80,000.00 and to pay proportional costs.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Records, p. 3.

[2] Rollo, p. 92.

[3] Rollo, pp. 38-46.

[4] Rollo, p. 46.

[5] Rollo, p. 49.

[6] Records, p. 9.

[7] *People v. Sunpongco, et al.*, G.R. No. 42665, June 30, 1988.

[8] RTC Decision, Rollo, p. 278.

[9] TSN, December 1, 1983, pp. 98-102.

[10] People vs. Munoz, G.R. 61152, July 29, 1988; People vs. Ramilo, 147 SCRA 102 [1987]; People vs. De la Cruz, 147 SCRA 359 (1987).

[11] People v. Masangkay, 157 SCRA 320.

[12] People v. Federico Mendoza, G.R. 74653, July 26, 1988.

[13] Ibid.

[14] People v. Mustacisa, 159 SCRA 227.

[15] People v. Avanzado, 158 SCRA 427, 433.

[16] People v. Cayago, 158 SCRA 586.

[17] People v. Cabato, 160 SCRA 98.

[18] People v. Rosario, 159 SCRA 192.

[19] People v. Quidilla, G.R. No. 79369-70, October 28, 1988; People v. Budol, 143 SCRA 141 (1986).

[20] People v. Veloso, 148 SCRA 60, 67.

[21] People v. Veloso, Ibid.

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