

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO NIEBRES, ACCUSED-APPELLANT.

G.R. No. 69190. September 29, 1989

Ponente: PARAS, J.

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PARAS, J.:

Accused-appellant Eduardo Niebres y Blim was charged with the crime of rape in a complaint, dated April 7, 1980, subscribed and sworn to by Rosalinda Barcelona and filed before the then Court of First Instance of Rizal, Branch I.

After pleading not guilty to the crime charged, he was subsequently tried and convicted in a decision[1] dated September 29, 1983, to wit:

"IN VIEW OF ALL THE FOREGOING, the court finds the accused Eduardo Niebres y Blim guilty beyond reasonable doubt of the crime of rape, as charged, and sentences him to reclusion perpetua, with the accessories provided by law, to indemnify Rosalinda Barcelona in the amount of Twenty Thousand Pesos (P20,000.00) as moral damages and to pay the costs.

"The accused shall be credited with the preventive imprisonment he has undergone pursuant to Art. 29, Revised Penal Code, as amended by RA 6127.

SO ORDERED."

Hence, this appeal with the following assigned errors:

I

"THE LOWER COURT ERRED IN NOT FINDING THAT, BECAUSE THE HALF-SLIP, SKIRT AND PANTY OF COMPLAINANT WERE NOT RENT AND THE GARTERS OF THE SAME PANTY AND HALF-SLIP REMAINED INTACT, ACCUSED-APPELLANT DID NOT EMPLOY FORCE ON SAID COMPLAINANT.

II

THE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE OFFENSE OF RAPE."

(PP. 6-7, Brief for the Appellee; pp. 146-147, Rollo).

Complainant, a young girl, 19 years of age, at the time she testified on June 16, 1980, declared that she had known appellant Eduardo Niebres since January, 1979. She narrated that at about 2:45 o'clock in the morning of March 23, 1980, she went to Dayap St., Makati, to fetch water from a public faucet. She was the last and only person left as all the others before her who lined up to fetch water had already gone. Seeing that she was alone, appellant approached and poked a sharp pointed object wrapped in a piece of cloth (believed by complainant to be a knife)

at the left portion of her neck and with his right hand holding her upper right arm made her walk towards Bermeo St., threatening to stab her, if she would shout. When they reached Bermeo St. complainant was forced by appellant to lie down on a dark rocky place with plants. Appellant made love to the complainant while lying on the rocks, by positioning himself on top of her after removing his pants and pulling her panty down and succeeded in having carnal knowledge of her despite her struggle to free herself. All this time, appellant continued to hold the knife aimed at her neck, threatening to stab her should she shout to attract help. After he was through with her, appellant left the complainant with threats to her life.

As testified to by her mother, complainant was crying and trembling when she arrived home shortly after the rape incident. She related to her parents what transpired as she showed them her bloodied blouse and skirt. Just before sunrise, they were already at the police station in Dian St., Makati to report the incident. Accompanied by Pat. Sampana, the complainant returned to the place of the incident to look for the appellant but he was nowhere to be found. After taking down the complainant's statement, the police advised her to go to the NBI for medical examination. She was examined at about 10:30 in the morning of the same day by Dr. Valentin Bernales of the NBI who, after the examination, issued the following report:

"PHYSICAL INJURIES:

Contusions reddish: scapular region, right, 6.0 x 4.0 cms.: interscapular region, right side 4.0 x 2.0 cms. and left, 2.0 x 1.5 cm. lumbar region, along median line, 3.0 x 2.0 cms. Abrasion, reddish, elbow, right 1.0 x 1.0 cm. and left 3.0 x 1.0 cm. (EXH. "A-1")

"GENITAL EXAMINATION:

Pubic hair, fully grown, moderate. Labia majora, gaping Labia minora, coaptated. Fourchette, tense with healing laceration at the median line which bleed on slight manipulation. Vestibulamucosa, reddish. Hymen, tall, thick with healing laceration, complete deep at 9:00 and 11:00 o'clock positions edges of which are reddish and congested which bleeds upon slight manipulation. Hymenal orifice, originally annular, admits a tube or 2.8 cms. in diameter with mark resistance. Vaginal walls, moderately tight. Rugosities, moderately shallow."

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 sexual intercourse with man on or about the alleged date of commission." (Exh. "A-1") (pp. 2-3, Decision, pp. 5-6, Rollo)

About four days later, appellant went to the victim's house to ask her hand in marriage. She rejected such proposal. Right then and there he was apprehended by the police.

On the other hand, appellant, in his testimony as sole witness for the defense, does not deny having had sexual intercourse with the complainant. However, he claims that it was voluntary and without the use of force since they were lovers, appellant having courted and finally winning the love of complainant whom he met in November 1979.

Such claim is not substantiated by the evidence on the record. Except for his oral testimony in court, nobody or nothing was presented in court to corroborate appellant's testimony of their alleged relationship. The victim refuted such testimony of the appellant, when she denied on the witness stand any amorous relationship between them. Furthermore, if they were indeed sweethearts, why did the complainant refuse appellant's offer of marriage after they had already engaged in sex and instead she chose to undergo the rigors and humiliation of a public trial. Such reaction is unnatural for a young girl who had had sexual intimacies with the man of her choice if she truly

loves him. Moreover, there is no showing that she is a girl of loose morals. One can only surmise the pain and embarrassment the victim went through during trial because as the lower court observed:

"x x x the complainant was so shy or sensitively embarrassed to narrate what the accused did to her relative to the sexual intercourse and had to pause in her testimony to muster courage to say publicly what apparently was to her a very shameful experience."

Appellant insinuates that complainant wanted them to have the time for themselves so that she deliberately chose the wee hours of the morning to fetch water and she allowed her sister to leave her alone at the public faucet. This is purely conjectural and has no factual basis. Aside from the fact that it was established that they had no amorous relationship, it has been shown that the victim lives in a neighborhood where their only source of water is a public faucet located at Dayap St. Considering that there were many people fetching water from the same faucet, she had no control of her time as to when she would be able to finish drawing water.

Appellant faults the victim for not shouting to ask for help since the place where the incident happened was not dark and isolated contrary to the findings of the trial court. He also claims that the victim could have easily shouted for help while still at the faucet as it was located near a house and that there were still other people who lined up after her. While it may be true that several people arrived after her, it was also possible that when she lined up for the last time, no other people followed her, considering that she had to line up before the faucet not only once because after filling up a smaller container, she had to transfer its contents to a drum placed in a push cart, after which she had to fall in line again.

Complainant admitted that the corner of Bermeo and Calatagan streets was lighted with a fluorescent lamp. However, this lighted corner was located sixteen (16) meters away from the exact spot where the rape occurred so that the spot where the rape occurred was hardly illuminated. As to the corner of Dayap and Bermeo Sts., there was no showing that the Meralco post was lighted, and even if this was lighted, the light could not have possibly reached the place of the incident as the distance between them was approximately ninety (90) meters. Furthermore, the presence of plants and bushes taller than a normal person on the spot where the rape occurred, effectively blocked any light coming from the corner of Calatagan and Bermeo Streets. Besides at 3:00 o'clock in the morning the streets were already deserted and it is reasonable to expect that people inside their homes were already asleep. We have ruled that presence of people in a certain vicinity does not preclude the commission of rape (*People vs. Managbanag* 155 SCRA 669) which may be committed in parties or by the roadside, or in school premises or in other places where people usually pass by (*People vs. Aragona* 138 SCRA 569).

Accused-appellant argues that it was impossible for him to remove his pants, pull the victim's panty down to her knees and insert his penis into victim's organ while he was on top of her while holding a knife with his left hand. He questions the fact that the garter of complainant's panty remained intact even after the alleged resistance or struggling of the victim to free herself.

Considering that the victim was continuously threatened by the appellant with an object (believed by the victim to be a knife) pointed at her neck, thus it would be expected that fear for her life was simply overpowering and stifling any attempt to resist the sexual assault of the appellant. As enunciated in the case of *People vs. Cabradilla*, (133 SCRA 413) We reiterate the following:

"The working of human mind when placed under emotional stress, however, are unpredictable and people react differently. In this given situation, some may shout; some may faint; and some may be shocked into insensibility; while some may openly welcome the intrusion."

The fact that the garter of victim's panty remained intact does not negate rape. It could be possible that in the course of her struggle, her panty slipped down from her knees until it was eventually off her legs. Even if it stayed

just below her knees, sexual intercourse would not be impossible since the garter was stretchable. Appellant's feat in raping the complainant may be difficult to achieve but it is not at all impossible. Usually passion is high when one desires what is not his so that no obstacle is too difficult to overcome to achieve what is intended. The victim might be lacking tenacity or vigor in her resistance but that does not indicate consent to the sexual intercourse. If she did, why did she lose no time in complaining the rape to her parents and why did she denounce the appellant at the police headquarters before daybreak, rejecting later on, the proposal of marriage by the appellant? All these circumstances strongly reject the theory of appellant's innocence.

WHEREFORE, premises considered the appealed judgment is hereby **AFFIRMED**.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] Penned by Judge (now CA Justice) Celso L. Magsino.

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