

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SIXTO TABAGO, DEFENDANT-APPELLANT.

G.R. No. 69778. November 08, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

In Criminal Case No. Q-21679 of the Court of First Instance of Rizal, Quezon City Branch, Sixto Tabago y Asuncion alias "Tabski" was charged with the crime of Robbery with Rape committed as follows:

"That on or about the 27th day of August, 1982, in Quezon City, Metro Manila, Philippines; the above-named accused with violence against and/or intimidation of person, did then and there, wilfully, unlawfully and feloniously rob one Leni Chavez y Espiritu inside her residence located at Solomon Street, Duque District, Camp Aguinaldo, this City, by then and there passing through the window of said house and once inside, accused at gun point robbed and divested said Leni Chavez y Espiritu of her cash money amounting to P120.00, Philippine Currency; that on the occasion thereof and with the use of same gun, accused by means of force or intimidation, pointing said gun at the offended party forced her to take a tablet rendering her unconscious, after which accused did then and there, wilfully, unlawfully and feloniously have carnal knowledge of the said Leni Chavez y Espiritu, all done against the will and without the consent of the offended party, to her damage and prejudice in the total amount aforementioned and in such amount as may be awarded to her under the provisions of the Civil Code of the Philippines." (Original Record, p. 1)

After trial, Judge Jose P. Arro found the accused guilty as charged and sentenced him to suffer the death penalty and to indemnify the victim Leni Chavez in the amount of P15,000.00 as damages.

In view of the penalty imposed, the record of the case was forwarded to this Court for review, With the commutation of the death penalty to reclusion perpetua, pursuant to Art. III, Sec. 19(1) of the 1987 Constitution, the defen-dant was asked if he wanted to continue with this case as an appealed case, and he manifested in the affirmative.

The facts of the case, as stated by the Solicitor General in his brief, are as follows:

"At or about 9:00 o'clock in the morning of August 27, 1982, Sixto Tabago and Danilo Abanilla went to the residence of Sgt. Menardo Camerino at Solomon St., Quezon City. There they saw Leni Chavez, single, 17-year old maid of Sgt. Camerino, taking care of his 2-year old child and a 4-month old baby. Tabago asked Leni who her companions were and she told him that only the two children under her care were with her. On hearing this, Tabago left and proceeded to a nearby basketball court (pp. 3-5, tsn, April 27, 1983).

"Later, at or about 3:00 o'clock in the afternoon Tabago returned to the Camerino residence, entering the house through an open front window. Once inside, he forced a handkerchief into the mouth of Leni to gag her. At that time, the two children were asleep. Tabago then pointed a gun at Leni's neck and demanded money from her. Holding her by the hands, he dragged her to her bedroom. There, Leni was forced to yield the P120.00 kept with her clothings inside a carnation box.

"Tabago then kissed Leni and undressed her. And with Leni's body pressed between his thighs, he removed the

handkerchief, from her mouth, forced it open, and made her swallow a white tablet. After a while, Leni began to feel weak and she fell asleep (pp. 6-12, tsn, Id.).

"About an hour or so later, Leni woke up. Her blood-stained panty was already on the bed, her private part was painful, and it had blood. Realizing that Tabago had raped her, she cried and told her employer about it. She was brought by her employer to the house of Tabago at about 5:00 o'clock in the afternoon of the same day but he was not around. Then they proceeded to the headquarters of the Provost Marshal where Leni gave a sworn statement to Sgt. Mardonio Alipao (Exhs. 'A' and 'A-1') (pp. 12-18, tsn, Id.).

"Leni Chavez was physically examined by Lt. Col. Gregorio Blanco, MC (PC) Chief in the morning of August 28, 1982. His findings revealed that she had long ceased to be a virgin, having had sexual intercourse, as evidenced by a 'healed laceration', at least ten days before her examination. However, the presence of an 'abraided vulvar mucosa' or unhealed abrasion indicated that, aside from that previous intercourse, she had one close to the time of the examination. As explained by the examining physician -

'This vulvar mucosa which I have stated here refers to the area sur-rounding the vaginal orifice, and when I say abraided, there was abrasion, and in plain language, maybe we call it "gasgas", so that it is the area where I mentioned as abraided vulvar mucosa connoting that there was recent sexual intercourse because if this was not found we can say that the sexual intercourse had been done quite some time ago.' (p. 22, tsn, May 13, 1983).

On cross-examination, the attending physician testified thus -

'Q Now doctor, you said in your examination that there was recent sexual intercourse?

'A I would say that, if it is fresh abraided vulvar mucosa, it is three days, that is one to three. (pp. 26-27, tsn, Id.).

xxx xxx xxx

'Q And what was the basis of your conclusion that there was a recent intercourse, doctor?

'A Because of the presence of the abraided vulvar mucosa.

'Q How about in the area around the vagina, were there any fresh abrasion or laceration, doctor?

'A xx. I said those are the areas around the vaginal orifice. xx The abrasions are those in the area surrounding the vaginal orifice.

xxx xxx xxx

'Q Except the abrasion in the neck, there are no others?

'A

No more except the abrasions in the neck and the presence of abraded vulvar mucosa, those are the points I considered that there was recent sexual intercourse, sir. (pp. 27-28, tsn, Id.)." (Appellee's Brief, pp. 2-6, Rollo, pp. 141-145)

The accused, Sixto Tabago, upon the other hand, denied having committed the crime imputed to him and interposed the defense of alibi. He testified that he and Danilo Abanilla went to have a haircut at the barber shop, located beside the house of the complainant, at about 9:00 o'clock in the morning of 27 August 1982. While he was in the barber shop, he saw the complainant, Leni Chavez, taking care of a small child. But, he did not go to her. Since the barber did not come, he and his companion went home to the PMA detachment barracks where he lived, which is about 200 meters from the barber shop. He stayed in the barracks, where he helped in fixing the wheels of a motor vehicle until 3:00 o'clock in the afternoon when he and Junior, Pastolero, Sibal and others went to the basketball court of Alpha Company, about 400 meters from the barber shop. He played center against the opposing team of soldiers from the KKK and did not leave the game at any time. The game ended at 5:00 o'clock in the afternoon and then he went with Pastolero, Sibal and Junior to the market at Camp Murphy, where they stayed until 7:00 o'clock in the evening. He denied wearing a jacket in going to the basketball court as he does not own one. He stated that he was wearing only a T-shirt and maong pants in going to the basketball court. He also denied having gone to the house of the complainant on that day. He further denied having a gun in 1982 and robbing Leni Chavez of P120.00, or that he wore a mask or passed through the window of the house of the complainant.[1]

Defendant's testimony is corroborated by Simeon Callejo and Joselito Pastolero who both claimed that they were with the accused from 3:00 o'clock in the afternoon of 27 August 1982 until 7:00 o'clock in the evening of the same day.

In this appeal, the defendant contends that the trial court erred in finding him guilty of the crime charged on the basis of the uncorroborated and contradictory testimony of the complainant.

It has been consistently held, however, that in a prosecution for rape, the accused may be convicted even on the sole basis of complainant's testimony, if credible.[2] We have examined the record of the case with great care and we find no cogent reason to reverse and set aside the decision of the trial court. We are convinced that the defendant committed the offense complained of in the manner testified to by the complainant. The testimony of the complainant appears to be natural and convincing and includes details consistent with human nature and the course of things. Besides, there is no showing, much less a hint, of ill-motive on the part of the complainant to impute to the defendant the commission of so serious an offense which carries with it the maximum penalty, and to testify falsely against him if it were not true.

Moreover, the issue raised by the defendant is one involving credibility of witnesses and it suffices to re-state the well-settled principle that this Court has invariably respected the findings of fact of a trial judge who was in a position to weigh and appraise the testimony before him, except when circumstances of weight or influence were ignored or disregarded by him, which do not obtain in this case.

Furthermore, the defense of alibi of the defendant is not creditable as he had been positively identified by the complainant. It is contended, in this connection, that the complainant could not have identified the defendant as her assailant because the person who robbed and attacked her was wearing a mask. But, while it may be true that the complainant had testified that the person who robbed and then raped her was wearing a mask, she also said that only the lower portion of the face was covered - he was covered only up to the eyes.[3] Other parts of the body were visible and clearly distinguishable in broad daylight.

Asked how she was able to identify the defendant to be her assailant, the complainant declared:

"Q

How did you know that it was Tabago, because his face was covered?

A

Because he was wearing the same dress when he asked me on that morning when he entered, with the same hair, face, build and his rubber shoes.

Q

By the way, how long did you know Tabago before that date?

A

For around one month."^[4]

It was not also proven by the defendant that it was impossible for him to be at the scene of the crime when it was committed considering the proximity of the basketball court to the house of Sgt. Camerino where the crime was committed. His testimony that he played basketball, which is a fast and debilitating game for two (2) continuous hours, without substitution, is exaggerated and not worthy of belief.

Counsel for the defendant also assails the veracity of the claim of the complainant that she was raped by the defendant in the manner described by her, in view of the absence of fresh lacerations in the hymen of the complainant; the vaginal canal was negative for spermatozoa; absence of traces of drugs in the blood stream of the complainant; and the failure to present the torn dress and blood-stained underwear worn by her.

Indeed, the medico-legal report (Exh. B) does not show fresh lacerations in the hymen of the complainant. The medical examiner found, however, an "abraded vulvar mucosa" or fresh abrasions ("gasgas") in the vaginal orifice of the complainant which would indicate that the complainant had sexual intercourse soon before examination. His testimony reads:

"Q

Now, in plain language also, Mr. Witness, can you explain this technical word or technical words 'vulvar mucosa'?

A

This vulvar mucosa which I have stated here refers to the area surrounding the vaginal orifice, and when I say abraded, there was an abrasion, and in plain language, maybe, we call it 'gasgas,' so that is the area where I mentioned as abraded vulvar mucosa connoting that there was recent sexual intercourse because if this was not found we can say that the sexual intercourse had been done quite some time ago."^[5]

His testimony on cross-examination reads as follows:

"Q Now doctor, you said in your examination that there was a recent sexual intercourse.

A I would say that, if it is fresh abraded vulvar mucosa, it is three days, that is one to three.

Q Did you find in your examination whether there was a sperm?

A It is negative.

Q How about fresh lacerations, were there any?

A There was no more fresh laceration but instead, I was able to find healed laceration, sir.

Q And what was the basis of your conclusion that there was a recent intercourse, doctor?

A Because of the presence of the abraded vulvar mucosa."^[6]

In any event, the absence of fresh lacerations in the hymen of the complainant would not preclude a finding that she was raped, considering that the female sex organ is an elastic membrane and, as counsel for the defendant pointed out in her brief, the complainant was no longer a virgin on the day she was raped.

The absence of spermatozoa in the vagina of the complainant is not also a legal obstacle to a finding that rape had been committed because the important consideration in rape is penetration and not emission.^[7] Besides, spermatozoa cannot be detected after a few hours since it will have dried up.^[8] It is also possible that the defendant emitted the sperm cells outside the vagina.

The absence of traces of opium derivatives, barbiturates, amphetamine, methaqualone, valium and mogadon in the blood stream of the complainant, as stated in the forensic report (Exh. 1) is not conclusive that the complainant was not forced by the defendant to swallow a white pill which made her lose consciousness. As stated by the Solicitor General, there are a variety of sleep-drugs in the market and there is need for assurance that tests for all these drugs have been undertaken before complainant's testimony could be disregarded.

The failure of the prosecution to present the torn dress and underwear of the complainant is not fatal to the case for the prosecution because said articles are not indispensable evidence to prove rape.^[9]

Counsel for the defendant further contends that it was impossible for the offense to have been committed, as testified to by the complainant, considering that the place where it was allegedly committed was inside a housing site in Camp Aguinaldo where the houses are very close to each other and a scream would have summoned the neighbors; besides, it was broad daylight.

This contention is manifestly untenable. The crime of rape has been committed in vicinities or places where people congregate such as parks or by the roadside or even within school premises where people abound.^[10] Besides, it would appear that the offense was committed inside the house of Sgt. Camerino with nobody else around except two sleeping children, and the complainant could not scream because she was threatened with a gun and then gagged with a hand kerchief, after which she was forced to swallow a pill which made her unconscious.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** with the modification that the penalty imposed upon the defendant-appellant is reduced to reclusion perpetua, but the indemnity to be paid to the offended party is increased to P20,000.00.

SO ORDERED.

Melencio-Herrera, (Chairperson), Paras, Sarmiento, and Regalado, JJ., concur.

[1] tsn of July 25, 1983, pp. 3-12

[2] *People vs. Alcid*, G.R. Nos. 66387-88, Feb. 28, 1985, 135 SCRA 280, 286, citing *People vs. Galicia*, 123 SCRA 550; *People vs. Aragona*, G.R. No. L-43752, Sept. 19, 1985, 138 SCRA 569, 577

[3] tsn of May 13, 1983, p. 8

[4] *Id.*, p. 9

[5] *Id.*, pp. 22

[6] *Id.*, pp. 26-27

[7] *People vs. Balane*, L-48319-20, July 25, 1983, 123 SCRA 614 and cases cited; *People vs. Oydoc*, G.R. No. 61679, Oct. 26, 1983, 125 SCRA 250; *People vs. Monteverde*, G.R. No. 60692, July 11, 1986, 142 SCRA 668 and cases cited; *People vs. Ocampo*, L-47335, Aug. 13, 1986, 143 SCRA 428 and cases cited.

[8] *People vs. Calimquin*, G.R. No. 61255, Oct. 28, 1983, 125 SCRA 499, 520

[9] *People vs. Budol*, L-48010, July 31, 1986, 143 SCRA 241, 252

[10] *People vs. Aragona*, *supra*, footnote 2

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