

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARMELO PATON-OG, ACCUSED-APPELLANT.

G.R. No. 70574. November 27, 1987

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

An appeal from the Decision of the Regional Trial Court of Leyte, Branch XII, Ormoc City, in Criminal Case No. 2242-0,* convicting the accused Carmelo Paton-og of the crime of Rape and sentencing him to reclusion perpetua.

The version of the prosecution lent credence by the lower Court, and as summarized in the People's Brief, follows:

"At 11:00 o'clock on the morning of December 20, 1982, a Monday, complainant Elvira Arias arrived at Ormoc City from Pilar, Cebu as she intended to take a 'special' boat trip from Ormoc City to Cebu City. However, when she went to the Aboitiz office, no more tickets were available for the special trip which leaves in the morning of Tuesday. Hence, at around 2:00 o'clock in the afternoon, she took instead a passenger jeepney bound for Baybay, Leyte (tsn, pp. 24-31, Nov. 24, 1986).

"Upon arriving at Baybay, Leyte at about 4:20 in the afternoon, she went to the house of her friend, Si Hong, to look for Nenita Gucela, another friend. As the latter was not there, she left a letter for her at Si Hong's house (ibid, p. 32).

"Thereafter, she decided to go back to Ormoc City for the purpose of having her goiter 'prayed over', she, being a member of the charismatic movement. Thus, at 5:30 in the afternoon, she left Baybay, Leyte for Albueria, Leyte, taking a passenger jeepney. Upon arrival at Albueria at past 6:00 o'clock in the evening, she hitched a ride in a truck owned by Biophil, Inc. Besides her in the truck were four (4) male passengers. Two of them alighted at Barrio Talisayan, Albueria. At Talisayan, the truck she was riding on took in five (5) teenagers including the appellant (ibid., pp. 33-40). As the truck's destination was only up to the Biophil compound at Barangay Ipil, all the passengers including the complainant and the appellant had to alight. The four teenagers who were with the appellant at Talisayan boarded a sugarcane hauling truck bound for Ormoc City while the appellant was left behind with the complainant. Appellant approached complainant and the latter, being a stranger to the place, inquired where pedicabs bound for Ormoc City were parked. Appellant replied that it was still some distance from the Biophil compound. He then asked her whether she was new to the place and she said yes (tsn, p. 6, July 9, 1984; pp. 40-41, tsn, Nov. 24, 1983). Appellant later pointed to a certain place so they walked together towards the place where pedicabs are stationed. While walking, they passed a railway track wherein big tanks were at both sides of the track. They also passed by a building but still there was no sign of pedicabs. She again asked, 'where are the pedicabs?'. He answered that it was still farther off. At a distance beyond a canal, appellant suddenly held her hands. As she resisted his advances, appellant boxed and choked her dragging her to the nearby bushes. Frightened out of her wits, she shouted for help until her throat nearly exploded. Pleading for her release, she offered him her wristwatch and told him that she had children but her appeal fell on deaf ears (ibid, pp. 41-43, p. 49).

"Thereafter, she was boxed some more at different parts of her body and was choked several times. As a result, she fell down several times and whenever she tried to stand up, he would pull her back until her clothes were all muddy (ibid., pp. 48-49). While he was choking her, she bit his hand but not too hard for fear that he might kill her. She also got hold of his penis when his pants and underpants were already down and pulled it to try and stop him from consummating his evil desires. But because of the blows on her head, chest, and thighs and the heavy pressure on her neck due to the choking, she became tired, weak and powerless. It was at this juncture that he started to insert his penis inside her vagina.

"At the point of full penetration of appellant's penis, she lapsed into unconsciousness and could not recall anything thereafter. Upon regaining her senses, she found herself lying down and her panties were nowhere to be found. Fearing that the appellant might get his companions, she got up and ran to the Biophil compound where she was met by a guard. She told the latter what happened and the guard allowed her to ride on a Kadiwa jeep for Ormoc City (ibid., pp. 12-13, 49, and 51).

"At Ormoc City, she went to the house of her cousin, Cecilia Blancha and they proceeded to the police station in the pier area of Ormoc City. While she was there, she reported the incident and requested for a physical examination and she was brought to the Ormoc General Hospital where Dr. Nelson Seno conducted the examination (ibid., pp. 13-14). She was given a medical certificate which reads:

"This is to certify that Elvira Arias, 46 years old, female, married, of Pilar, Cebu has been attended to in this hospital on December 20, 1982 at 10:45 P.M. for: (1) Swollen (r) upper jaw; (2) Mucosal abrasion lower lip (L) side; (3) Pelvic examination; (4) admits readily index and middle finger; (5) old laceration, vaginal canal; (6) sperm examination done - negative. Condition of patient on the date attended: conscious. Under observation. Remarks: went home after treatment.' (pp. 19-20, tsn, Nov. 24, 1983). The injuries will incapacitate the patient from his ordinary labor or require medical attendance for a period of less than nine (9) days x x x ."

"After the examination, she went back to her cousin's house to clean herself of the mud. She returned to Pilar, Cebu the following day (ibid., p. 17).

"On December 24, 1982, she returned to the PC Camp in Ormoc City where she was asked by PC Cala to identify from among the four teenagers in the line up (who were also her companions in the Biophil truck) her abuser. Since the appellant was not in the line up, she did not point at anyone. She instead gave the description of the man who sexually abused her as the smallest from among the five teenagers who boarded at Talisayan (ibid., pp. 17-18).

"She returned to the PC Camp on December 28, 1982 to give her sworn statement regarding the events of the herein case (Records, tsn, p. 18, Nov. 24, 1983).

"An order of arrest was issued by Judge Francisco Pedrosa on March 15, 1983. On July 6, 1983, appellant was arrested in Ormoc City by Pat. Maximo Lauron and Pat. Guillermo Adolfo." [1]

On the other hand, the testimony of the accused Carmelo Paton-og, 24 years old, single, jobless and a resident of Barangay Ipil, Ormoc City, was summarized by the Trial Court, thus:

"The accused, CARMELO PATON-OG, taking the stand, told the Court that he came to know Elvira Arias only when he was called for preliminary investigation in the Office of the City Fiscal in Ormoc. On December 20, 1982 at about 7:00 o'clock in the evening, he was in Brgy. San Antonio, Ormoc City, with four (4) companions, namely: Sammy Sodigo, Nonito Barabad, Carlos Bando and Ray Oliver. In going home from San Antonio, they rode a Biophil truck. Aboard the truck was one female passenger whom he did not recognize. Upon reaching the Biophil Compound, the passengers of the truck alighted, including Nonito Barabad, Carlos Bando, Ray Oliver, himself and the woman. The driver of the truck drove the vehicle inside the Biophil Compound. The woman asked him if there were still trips to Ormoc City. According to the accused, his four other companions rode on a sugarcane truck for their respective houses from the OSCO Compound. He was

not able to ride on the truck with his companions for he was not fast enough to overtake and board the same. He then left the woman, after she had an agreement with a truck driver for the latter to conduct her home. While walking home, he saw his friends, Mario Alba and Leonito Bendijo, each one riding a bicycle from Tinag-an. Accused hitched a ride on the bicycle of Mario Alba and was conducted to his house in Brgy. Ipil. That night, he went to sleep at past 7:00 o'clock, after supper, and never went out of the house.

"According to the accused, as to this rape charge against him, he had nothing to say, for he did not know about what the offended party declared in court. According to the accused, he never held her hands, boxed her, or raped her. The accused however told the Court that he arrived at the Biophil Compound with all his companions, including the woman passenger."[2]

Defense witness, Mario Alba, partly corroborating the accused's testimony, testified that on the night of December 20, 1982, he was in Sitio Tinag-an, Brgy. Ipil, Ormoc City, with his companion Leonito Bendijo. On their way home they happened to pass by Carmelo Paton-og, who hitched a ride with him on his bicycle. They conducted him home and thereafter returned to their respective houses.[3]

On September 13, 1984, the Trial Court, finding the prosecution evidence more credible, convicted and sentenced the accused, as follows:

"WHEREFORE, in view of all the foregoing, this Court finds the accused, CARMELO PATON-OG, guilty beyond reasonable doubt of the crime of rape, as defined and penalized under Article 335 of the Revised Penal Code, and imposes upon him the penalty of Reclusion Perpetua, with all the accessory penalties provided for by law, ordering him to indemnify the offended party in the sum of P12,000.00 and to pay the costs of this action."[4]

In this appeal, the accused relies on a single assignment of error:

"The trial court erred in convicting the accused of the crime of rape considering that the prosecution failed to prove beyond reasonable doubt that the accused raped the complainant."

We find otherwise. The bare denial by the accused cannot prevail over his positive identification by complainant. The latter's version of the incident bears all the earmarks of spontaneity, candidness and credibility. Thus, immediately after she was forcibly abused, she immediately reported the heinous offense to the guard at the Biophil compound, who took pity on her and helped her board the Kadiwa jeep bound for Ormoc City. Upon arrival thereat, she lost no time in asking her cousin to accompany her to the police station to report the incident. Having done so, and upon her own request, she was taken to the Ormoc General Hospital for physical examination. The medical finding of "swollen (r) upper jaw" and "mucosal abrasion lower lip (L) side" confirms the "heavy pressure on her neck due to choking by the accused," which she had narrated. After the physical examination, she went back to her cousin's house to clean herself of the mud on her clothes, which act tallies with her testimony that she fell down on the ground several times because the accused would pull her back every time she tried to stand "until her clothes were all muddy."

Complainant's credibility is further enhanced by the care she had exercised in her identification of the accused. In the line-up of suspects, composed of her companions in the Biophil truck, presented to her by the PC on December 24, 1982, she pointed to no one as her abuser but instead gave a more specific description of the culprit as the "smallest from among the five teenagers who boarded at Talisayan". The accused was eventually arrested on July 6, 1983. Indubitably, therefore, complainant had sufficiently recognized her assailant and could not have been mistaken as to his identity.

While the accused has denied culpability, the fact remains that he partly corroborated complainant's testimony when he said that on December 20, 1982 he, his companions and a "female passenger," (who could have been

none other than complainant herein), rode together in a Biophil company truck; that upon reaching the Biophil compound, they all alighted; that the "woman" asked him if there were still trips to Ormoc City; that he was, in fact, left behind with the "woman" as he was "not fast enough to overtake and board" a sugarcane hauling truck with his companions. Thereafter, and in this he differs from complainant's version, he declared that "he then left the woman, after she had an agreement with a truck driver for the latter to conduct her home".

We can give no credence to this last statement, however, considering that it is most unlikely that he would have shown even the remotest concern for a "woman" who was unknown to him as he had testified. Neither can we believe the accused's declaration, corroborated by his witness, Mario Alba, that he had hitched a ride on the latter's bicycle and had gone home soon after his companions did. All these are belied by complainant's graphic description of the manner in which the accused had tricked her, a stranger to the place, into going to an isolated area instead of leading her to the pedicab parking space as she had requested, and after overpowering her, having carnal knowledge of her by means of force and violence. The record herein satisfies the Court, as it did the Trial Court, that complainant's testimony, and not the denials by the accused, is the truth.

The inconsistencies and contradictions attributed to complainant are de minimis. Thus, it is contended that in her affidavit of December 28, 1982, she did not state that she had become unconscious when the accused had carnal knowledge of her, while in her testimony she declared that "she was already unconscious and did not have strength when accused's penis penetrated her vagina."^[5] Ergo, it is claimed that since complainant was unconscious she could not have testified as to penetration or entry of the accused's private part, which is an essential element of the crime of rape.

Actually, complainant's testimony on this point reads:

"Q - So in other words, you were conscious when his penis entered your vagina, is that correct?

A - I was already very weak and I did not have strength anymore and he was able to let his penis penetrate into my vagina.

Q - So, because you were already tired, you allowed the so-called push and pull movement in order that his penis will penetrate to your vagina and his semen will come out, is that correct?

A - I was already unconscious during that time and also because I was already very weak."^[6]

It is clear then that although complainant was already weak and powerless, she was still conscious as accused commenced the final act but that she lapsed into unconsciousness at the point of full penetration.

Even if so, lack of consciousness at that point does not negate the commission of the crime of rape. As this Court has consistently held, full penetration is not required.^[7] It is enough that there be proof of entrance of the male organ within the labia the pudendum,^[8] or lips of the female organ.^[9] The slightest penetration is sufficient to consummate the rape.^[10]

Be that as it may, complainant's testimony that there was penetration was further corroborated by the medical finding that pelvic examination of complainant readily admitted the index and middle finger. As the examining physician testified, there was possible penetration of a male organ in complainant's vaginal canal.^[11] The testimony had naturally to be couched in terms of possibility inasmuch as, owing to the nature of the offense, more often than not, the only evidence is the uncorroborated testimony of the alleged offended party,^[12] which should be proven impeccable in itself.

The Court finds that this test has been successfully met. Complainant's narration may have been nebulous in scattered portions, which we find is also due to deficiencies in the questions propounded, but this would not

detract from its intrinsic value nor from its basic credibility particularly on such crucial factors as the identification of the accused and his culpability for the crime.

The accused's defense of denial and alibi are too fragile to overcome the overwhelming evidence against him added to the fact that he himself owned that he was in the vicinity of the crime at the time of its commission.

WHEREFORE, the Decision appealed from is hereby AFFIRMED, with the MODIFICATION that the indemnity payable by the accused to the complainant is hereby increased to P20,000.00 in line with the latest jurisprudence.

Costs against accused-appellant Carmelo Paton-og.

SO ORDERED.

Yap, (Chairman), Paras, and Sarmiento, JJ., concur.

Padilla, J., no part, related to accused-appellant's counsel.

* Penned by Judge Francisco C. Pedrosa.

[1] Appellee's Brief, pp. 2-8.

[2] Rollo, pp. 72-73.

[3] T.s.n., April 10, 1984, pp. 3-6.

[4] Decision, pp. 8-9; Rollo, pp. 17-18.

[5] T.s.n., pp. 9-11, November 24, 1983.

[6] T.s.n., pp. 46-47, *ibid*.

[7] *People vs. Oscar*, 48 Phil. 527 (1925).

[8] *People vs. Pastores*, L-29800, 1971, 40 SCRA 498.

[9] *People vs. Conchada*, L-39367-69, 1979, 88 SCRA 683.

[10] *People vs. Selfaison*, L-14732, January 28, 1961, 1 SCRA 235.

[11] T.s.n., p. 13, January 25, 1984.

[12] *People vs. Sarile*, L-37148, June 30, 1976, 71 SCRA 593.

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