

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIONISIO HORTILLANO, DEFENDANT-APPELLANT.

G.R. No. 71116. September 19, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Dionisio Hortillano, was charged before the Regional Trial Court, Branch XVIII at Cagayan de Oro City, with the crime of rape in Criminal Case No. 3936, under a complaint which reads:

"That on or about January 4, 1983 at about 6:00 o'clock in the evening, more or less in Kauswagan, Municipality of Lagonglong, Province of Misamis Oriental, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused DIONISIO HORTILLANO, by means of force, intimidation and violence and with the use of a deadly weapon, wilfully, unlawfully and feloniously succeeded in having carnal knowledge with me against my will and consent. As a result, I have become pregnant.

"CONTRARY to and in violation of Article 335 of the Revised Penal Code." (Records, p. 1)

Upon being arraigned, the accused entered a plea of not guilty to the offense charged. The trial court, after trial on the merits, rendered its decision on January 11, 1984, the dispositive portion of which reads:

"WHEREFORE, the Court hereby finds the accused DIONISIO HORTILLANO guilty beyond reasonable doubt of the crime of rape, as charged in the sworn complaint, and as defined in Article 335, par. 1, of the Revised Penal Code, and as penalized under the fourth to the last paragraph thereof, the rape having been committed with the use of a knife - a deadly weapon - and there being neither mitigating aggravating circumstances attending the commission of the crime, hereby sentences him to suffer the penalty of RECLUSION PERPETUA, applying Articles 63(2) and 335 of the same Code, as amended by R.A. 4111; and further ordering the accused to indemnify Elsa Ancog the amount of TWELVE THOUSAND PESOS (P12,000.00) as civil liability, compensatory and moral damages, and the costs.

"SO ORDERED." (Decision, pp. 18-19; Rollo, pp. 29-30).

Not satisfied with the decision, the accused appealed.

The facts as found by the trial court are as follows:

Complainant, Elsa Ancog, then 16 years old, was a fourth year student at St. John the Baptist High School in Lagonglong, Misamis Oriental which is five kilometers away from her home. On January 4, 1983, she together with her classmates Belinda Bagaipo, Robinson Bao, Johanna Dagola and Adelina Bagongon were assigned by their teacher to stay behind after classes and clean their classroom. When the task was completed, complainant and Adelina Bagongon set for home. After walking a distance of half kilometer, Adelina Bagongon turned from the highway towards her home leaving the complainant alone. It was then about six o'clock in the evening and already dark. Shortly afterwards, complainant met the accused whom she greeted as she had known him since she was in first year high school. There was no response. Instead, the accused grabbed complainant's right hand and

pointed a knife at her throat. Complainant wanted to shout but the accused threatened her with death if she did. Then, the accused, armed with the knife, pulled complainant towards a hut some five meters away from the highway. Once inside, he tripped complainant by putting his foot across her feet so much so that she was forced to lie on her back on the bamboo bed. Thereafter, the accused forcibly pulled down complainant's skirt and panty and tore them both in the process. Complainant could not shout because the accused was pointing the knife at her throat. Then, the accused removed his pants and as complainant was about to make an outcry, he slapped her on the left cheek and she became dizzy. At this point, the accused placed himself on top of complainant and inserted his penis into her private part causing her to feel pain. After the coitus, he directed the complainant to dress up all the while pointing the knife at her throat and menacingly warned her not to say a word of the incident to her parents or else, he would kill her.

Complainant reached home at about seven o'clock that evening. Upon being confronted by her parents of the lateness of the hour, complainant told them of her school assignment as sweeper. She did not tell them that she had been sexually abused by the accused.

Complainant continued her schooling until she graduated that year. After graduation, she went to stay with her maternal aunt, Petrona Dahino, in Sta. Cruz, Claveria, Misamis Oriental, to help harvest coffee. At this juncture, complainant's pregnancy was discovered by her aunt. Consequently, she related to her aunt the sexual assault committed against her by the accused.

On May 11, 1983, complainant and her aunt went to the former's home at Kauswagan. Upon learning of the rape and the resulting pregnancy, complainant's parents were shocked and angry. Complainant's father slapped her for failing to immediately report the heinous deed of the accused. The following day, complainant and her parents went to the Office of the Provincial Attorney where the former executed a sworn statement (Records, p. 3). In said affidavit, the date of the commission of the offense was placed on January 7, 1983 but the same was later corrected by complainant to January 4, 1983. Likewise, the complaint filed by the Fiscal based on complainant's affidavit was, subsequently, amended to reflect the true date of the incident.

On June 11, 1983, the complainant was examined by Dr. Apolinar A. Bacalares, Chief of Northern Medical Training Hospital at Cagayan de Oro City, who submitted a Living Case Report which stated the following findings:

"FINDINGS

GENERAL PHYSICAL EXAMINATION:

Height: _____ Weight: _____

Fairly developed, fairly nourished, conscious, coherent, cooperative walking subject. Breast engorged. Abdomen enlarged & the uterus measures 20 cm from the symphysis pubis to the fundus. Fetal heart beat - 120/min. RLO.

GENITAL EXAMINATION:

Pubic hair scanty and fully grown. Labia minora & mehora gaping. Old hymenal lacerations are noted at 6, 9 & 1 o'clock position of the watch edges by which rounded and gaping. Cervix soft.

CONCLUSIONS:

She is actual (sic) pregnant between 6 to 7 months olds (sic)." (Exh. C., Records, p. 5.)

On October 3, 1983, the complainant gave birth to a stillborn baby.

In this appeal, appellant, who was 54 years old at the time of the incident, claims that a doubt arises as to the existence of rape in view of (1) the complainant's failure to immediately report the alleged sexual abuse to her parents; (2) her normal behavior afterwards in school, at home, at her aunt's place and before the trial court where she did not cry as she narrated her ordeal; and (3) the amendment of the date of the commission of the rape in the affidavit and the complaint after the lapse of six months; that it is unlikely for complainant to be raped at the point of a knife in a hut with a wide opening near the national highway unnoticed by passers-by and/or workers harvesting palay; that it was, also, contrary to human behavior for complainant not to make an outcry or defend herself during the rape there being no sign of injury inflicted upon her person; that contrary to complainant's statement, her uniform was not torn and that the worn panty offered in evidence could not even be used at home or in school; that the trial court erred in disregarding appellant's defense that on that fateful day, he was with Pablo Adajar, his hired maya watcher, at the same hut in his ricefield and that they went home together; that Adajar corroborated his alibi and that the said testimony was un rebutted by the prosecution; that his whereabouts at that time was likewise confirmed by Ernesto Flores, owner of a nearby ricefield, who testified that he saw appellant with Adajar that same day and that he also saw complainant along the national highway bound for home; that again, Flores' testimony was not disputed by the prosecution; that Dr. Apolinar Bacalares testified that complainant was no longer a virgin which belied the latter's statement and at the same time sustain his defense that he has had six sexual relations with complainant with her consent and for a fee before the incident. Finally, appellant admits the paternity of the child but staunchly denies raping the complainant (Appellant's Brief, Rollo, p. 43).

The arguments of appellant are not impressed with merit.

We find that the amendment of the date of the commission of the rape in the affidavit and the complaint which took sometime is not a fatal defect which would invalidate the complaint. Under Rule 110, Section 10 of the Rules on Criminal Procedure, it provides that "it is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit." In rape cases, the date is not an essential element of the crime and, therefore, need not be accurately stated. Moreover, appellant was not prejudiced by the amendment. Undoubtedly, he was informed of the nature of the charge filed against him and could still raise the defenses available to him after the amendment was made.

Complainant's delay in reporting the rape to her parents is understandable. Considering her tender age coupled with the fear due to appellant's threats, complainant could not be expected to immediately divulge the wrong done to her. We have held that "the silence of the offended party in a case for rape, or her failure to disclose her defilement without loss of time to persons close to her and to report the matter to the authorities, does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Other relevant facts and circumstances must likewise be considered to determine the veracity of the accusations." (People v. Garcia, et al., Nos. L-45280-81, June 11, 1981; 105 SCRA 6, 26). Complainant's fear of appellant was a real and continuing one. Thus, the trial court declared:

"x x x Elsa Ancog was still schooling and because of that she had to pass along the highway, beside which is the ricefield of the accused where she would see him on her way to school. The fear for her safety was continuing. Or at least, the occasions for the threatened risk were recurring." (Decision, p. 14; Rollo, p. 25)

Such fear could not be termed as unnatural or uncommon among young people in the rural areas. The stigma that would follow if the sexual abuse would be known by her peers and neighbors, the broken family reputation and the wrath of her parents were not lost on complainant and could have added to her confusion.

Appellant argues that he could not have raped the complainant inside an open hut near the highway unnoticed by passers-by and harvest workers of nearby ricefields. Such argument is untenable. It must be remembered that the crime was committed at about 6:00 p.m. in the month of January. We agree with the Solicitor General when he observed that:

"x x x during the month of January, the nights are longer than the days. At 6:00 p.m., it is already dark. Thus, in most probability, at the time of the incident, there were no longer vehicles in the highway and people in the fields.

"When she testified, complainant stated at the time of the incident, there were no vehicles and persons passing through the highway. She also stated that the interior of the "kamalig" could not be seen from the highway (pp. 25-26, tsn, August 11, 1983)." (Appellees' Brief, p. 11; Rollo, p. 75)

Apart from the pictures of the hut which do not preclude the commission of the crime, appellant's assertion that passers-by and harvest workers pass through that road at about the time the rape was committed was unsupported by evidence.

Further, appellant assails complainant's behavior during and after the rape as indicative of the non-existence of the crime. He contends that during the alleged rape, complainant hardly resisted or made an outcry there being no sign of injury on her person; that after the rape, complainant resumed her usual routine; and that at the trial she did not even cry as she recounted her ravishment. We cannot sustain the appellant's logic. The fact that complainant did not have any injury or did not offer any resistance during the sexual assault will not disprove the rape. Rape may be committed even if no force was used; intimidation is sufficient, and this includes the moral kind such as the fear caused by threatening a girl with a knife or pistol (*People v. Copro*, L-37599, December 29, 1983; 126 SCRA 403, 411). Appellant threatened the complainant and kept the knife pointed at her as he abused her. This fear is sufficient to terrify a 16 year old into inaction. The absence of tears will not militate against complainant's credibility. Human reactions vary and are unpredictable. A person at one moment may cry his heart out over his misfortune but may be dry-eyed the next time he recalls his tragic fate.

In regard to complainant's skirt and panty, she had clearly testified that what was torn in her skirt was the zipper and that since it was her only uniform, she used a safety pin to fasten it (TSN, August 11, 1984, p. 109). The fact that the panty is of such kind that could not be worn at home or even in school is irrelevant. It suffices that the physical evidence supports the version of complainant.

Further, appellant puts up the defense of alibi. He presented Pablo Adajar, his hired maya watcher, who corroborated his whereabouts on that fateful day. The trial court was correct to reject the appellant's defense. It ruled:

"Alibi is part of herein accused's defense. It cannot prevail, his identity having been positively established by the prosecution's evidence. Accused is known to the complainant and her parents, as admitted by the accused. They reside in the same barangay of Kauswagan, in Lagonglong, Misamis Oriental. The accused is one of the landed gentry of Kauswagan, Lagonglong, Misamis Oriental. He is the sire of five grown-up children, and he is living with his wife Dionisia Abug in said barangay. He declared that he left the hut where the sexual assault was committed at 6:30 in the evening which is at or about the time which according to Elsa Ancog she was raped by the accused as charged in the criminal complaint.

"To establish an alibi, the accused must show that he was at another place for such a period of time; that it was impossible for him to have been at the place where the crime was committed at the time of its commission (*PEO. VS. BAYLON*, 57 SCRA 114, 120 (1974)). The accused herein failed to measure up to these settled requirements for the defense of alibi to prevail. On the contrary, by his own admission, he was at the place of commission of the rape, and at the time as testified on (sic) by the complainant and as charged in the

complaint." (Decision, pp. 16-17, Rollo, pp. 27-28).

Lastly, appellant points to the findings and testimony of Dr. Bacalares which allegedly stated that complainant is no longer a virgin as supportive of his defense that he has had six sexual relations with complainant with her consent and for a fee. It must be stressed once more that virginity is not an essential element of the crime of rape. The fact that the victim has had several sexual liaisons will not rule out the crime of rape. On this score, We sustain the trial court which held:

"The doctor's conclusion does not necessarily disprove the rape as claimed by the complainant, for said doctor in redirect examination admitted that it was possible that the sexual intercourse was during the first week of January; and that only one man had sex with the complainant. Complainant Elsa Ancog, on rebuttal, categorically denied accused's testimony of prior and several consensual (and for a monetary consideration) sexual intercourse by the two of them. She stated that the banana plantation of the alleged place of tryst on six different occasions is frequented by workers even on Sundays, among them her two elder brothers Jaime and Arturo Ancog. Thus, the supposed trysts or assignations being unlikely, at least as to place and time, could not have taken place at all. Even if they did, as already ruled; same is irrelevant." (Decision, p. 17; Rollo, p. 28)

The rape was not attended by any modifying circumstances. Thus, the trial court properly imposed the penalty of reclusion perpetua. However, the award of Twelve Thousand Pesos (P12,000.00) as indemnity to the complainant is increased to Thirty Thousand Pesos (P30,000.00) (People v. Resano, L-57738, October 23, 1984; 132 SCRA 721).

ACCORDINGLY, with the modification above indicated, the decision appealed from is **AFFIRMED** in all respects. With costs against appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

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