

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO NG Y DOANE, DEFENDANT-APPELLANT.

G.R. No. 71117. July 10, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

On November 15, 1982, complainant Wilma Natividad y Castaneda charged Edgardo Ng y Doane with the crime of forcible abduction with rape. When arraigned, the accused pleaded not guilty.

On March 8, 1985, the Regional Trial Court of Manila, Branch XXXIII rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Edgardo Ng y Doane guilty beyond reasonable doubt of the complex crime of forcible abduction with rape and pursuant to the provisions of Article 48 in relation to Articles 335 and 342 of the Revised Penal Code, there being no mitigating or aggravating circumstance to offset each other, the Court hereby sentences and imposes upon the herein accused the penalty of RECLUSION PERPETUA; to pay the offended party Wilma Natividad the amount of P15,000.00 as moral damages and to pay the cost."

In this appeal, the accused-appellant raises the following assignments of errors:

I.

The lower court erred in finding that the evidence presented by the prosecution was sufficient to warrant the conviction of the accused for the crime of forcible abduction with rape.

II.

The lower court erred in disregarding the motive behind the filing of the case.

and prays that the judgment of conviction be reversed and the accused-appellant be acquitted of the crime charged.

In lieu of an appellee's brief, the Office of the Solicitor-General through Officer-in-Charge Ramon A. Barcelona, Assistant Solicitor General Roberto A. Abad, and Attorney Michelle Camille P. de Leon filed a manifestation and motion submitting that the crime charged has not been established to a moral and legal certainty and recommending that the judgment of the trial court be reversed and the appellant acquitted.

The People's manifestation states:

"Wilma Natividad claims that on November 10, 1982 at 4:50 o'clock in the afternoon, she left her house in San Andres, Manila to attend her classes (tsn. Oct. 10, 1983, p. 71). On her way to school, along Leon Guinto Street, she was suddenly ap-proached by three men and one of them, the appellant Edgardo Ng, drew out an ice pick and poked this at her side. They forced her aboard a pas-sengerless public utility jeepney bound for Caloocan (Ibid., pp. 77-80). It was a quiet ride except that ap-pellant held Wilma by her right arm (Ibid., p.

80). On reaching La Loma Cemetery; the jeepney made a U-turn and stopped at a gasoline station. There, appellant brought out his ice pick again and forced her to go down (Ibid., p. 85).

"After getting off the jeepney, appellant and Wilma took a tricycle (Ibid., p. 86) to appellant's house in Caloocan (Ibid., p. 89). She came to know that it was appellant's house because he told her so (Ibid., p. 91). They arrived at about 6:45 o'clock in the afternoon (Ibid., p. 97).

"Upon reaching the house, the accused opened the door, pushed Wilma inside, and made her sit on the sofa where he repeatedly kissed her (Ibid., pp. 92-93). After a while, however, an old man came in unannounced. Appellant told Wilma that he was his grandfather. In a moment, the old man left and appellant resumed kissing her again (Ibid., pp. 94-95). This went on for almost two and a half hours (Ibid., p. 99). Later, appellant brought her to a room where he left her (Ibid., p. 100).

"Shortly after, appellant returned with a bolo (Ibid., p. 101) and wearing only his briefs (Ibid., p. 116). While holding the bolo, appellant ordered Wilma to strip but she declined. Consequently, appellant stripped her of her clothing's piece after piece (Ibid., p. 102), placing the bolo meanwhile beside him (Ibid., 103). Wilma appealed to appellant and begged him to stop but her pleas fell on deaf ears (Ibid., p. 104). He cursed and threatened her, warning that if she refused she would be the third woman he would punish (Ibid., pp. 104-105). She could only curse back at him (Ibid., p. 105).

"After he had undressed her, appellant kissed Wilma repeatedly and forced her to lie down on the floor (Ibid., pp. 109-110). She resisted him but, by 11:00 o'clock, when she was already weak, appellant succeeded in laying her down and ravishing her (Ibid., pp. 111-114). When it was over, appellant allowed her to sit on the sofa inside the room (Ibid., pp. 117-118). There she cried but appellant continued kissing her (Ibid., p. 122). Later, appellant forced her down on the floor once more and kept on embracing her (Ibid., p. 123) for about an hour (Ibid., p. 125). He kissed her breast and her private parts (Ibid., pp. 125-126). When it was about 3:00 o'clock in the morning, appellant had carnal knowledge of her again (Ibid., pp. 132-134). While he slept, she put on her clothes and waited until 6:00 o'clock when she slipped out of the house and escaped (Ibid., pp. 146-147).

"Evidence of Appellant

"Appellant, on the other hand, claims that he and Wilma were phone pals from June, 1982 and that their meeting on November 10, 1982 was mutually arranged (tsn., p. 11, Nov. 8, 1984). On that day, he brought her to his house in Caloocan where he introduced her to his grandmother as his girlfriend (tsn. p. 11, Nov. 8, 1984). The grandmother cooked for them and served them supper before nine in the evening. After eating, the couple sat in the sala, watched television and talked.

"After an hour, appellant suggested that Wilma go home but she refused saying that she was afraid to go home late (tsn. p. 16, Oct. 18, 1984). Instead, she called up her house and said that she will be sleeping at a cousin's house. Appellant then took her outside the house to meet his friends, introducing her as his 'siota' or girlfriend (tsn. pp. 17-18, Oct. 18, 1984). After about an hour of talks, she told appellant that she wanted to sleep, so they both went back to the house. Appellant's grandmother asked Wilma if she wanted to sleep with her but Wilma declined, saying that she preferred to sleep with appellant. (tsn. pp. 20-21, Oct. 18, 1984).

"While in appellant's room, the couple talked to each other for awhile. Eventually, they had sexual intercourse (tsn. p. 22, Oct. 18, 1984).

"The following morning, at about 7:00 o'clock, appellant accompanied Wilma to the jeepney stop where she took a ride home (tsn., p. 23, Oct. 18, 1984). Before parting, however, she gave him her necklace for him to keep until they meet again later in the afternoon.

"Discussion

"Appellant is charged with the complex crime of forcible abduction with rape.

"For forcible abduction to ensue, the following elements must concur:

"(1) The person abducted is any woman, regardless of her age or reputation;

"(2) The abduction must be against her will; and

"(3) The abduction must be with lewd designs.

"For rape to ensue, on the other hand, a man must have carnal knowledge of a woman under any of the following circumstances:

"(1) By using force or intimidation;

"(2) When the woman is deprived of reason or otherwise unconscious; and

"(3) When the woman is under 12 years of age, even though neither of the circumstances mentioned in the 2 next preceding paragraphs shall be present.

"Plaintiff-appellee submits that appellant is not guilty of abduction with rape.

"To start with, the prosecution's evidence of forcible abduction is hardly convincing. The complainant, Wilma had many opportunities for escaping or getting outside assistance but, surprisingly, she did not avail herself of these. What is more, the manner by which she was allegedly forcibly taken is inconsistent with ordinary human conduct in the circumstances. If a man intends to abduct a woman, it is not likely that he will use, as a means of get-away, public utility transports. Here, appellant allegedly used a passenger jeepney and a tricycle.

"Wilma claims that all throughout the jeepney ride from Leon Guinto to La Loma, she merely kept quiet and bowed her head in fear. Considering, however, that appellant had put away his icepick to keep it hidden, Wilma was in no immediate danger. It is difficult to believe that she would stay mute and dimi-nutive all throughout the long journey to appellant's house. She had every opportunity to scream, struggle, kick, or cause a commotion to attract attention. A jeepney, after all, is an open vehicle and its passengers can be easily seen from the street or from other vehicles especially since it was rush hours in the afternoon.

"When the jeepney came to a stop, Wilma said that only she and appellant alighted and took a tricycle ride to his residence. Since they stopped at a public place, she could have broken away from him or done something to attract attention. Again, she did nothing. On the tricycle ride, she just kept quiet and bothered not to tell the driver that she was being kidnapped.

"That appellant took Wilma with a lewd purpose in mind also does not seem to tally with her version of the facts. Appellant took her to his home and even introduced her to his grandfather. In our culture, a man bringing home a woman and introducing her to his elders is a sign that he does not hold her in low regard. If he had any lewd designs on her, let alone any plans of raping her, why would he bother to bring home and introduce her to his elder?

"More when appellant introduced her to his grandfather, Wilma had the chance then to tell him that his grandson was keeping her against her will. Again, she remained silent. At that time, there was no icepick or other deadly weapon threatening her. She could have jumped at that opportunity and let the old man know that she needed help. Instead, she did nothing.

"As to the imputation of rape, Wilma's uncorroborated testimony leaves much to be desired. For one thing, she claims that appellant kissed and touched her for 2½ hours before locking her in his room and raping her. She said that she did not assent to this torrid romancing but neither did she fight him once. And when his grandfather showed up in the middle of all this, she just kept quiet.

"For another thing, when appellant was about to rape her, she said that he took of her clothing piece by piece, tucking them away under a pillow. If this was indeed rape and she was resisting him, such leisurely manner in unbarring her body would not be possible for he would be tearing away her clothes without further ceremony.

"When the accused fell asleep after he raped her a second time at 3:00 o'clock in the morning, Wilma waited until 6:00 to escape. Her natural reaction if she was actually being held against her will and was raped would have been to run away at the first possible opportunity. Yet she did not do so.

"What is worst is that Wilma never cried out nor screamed, much less struggled while she was being raped. Instead, she merely alle-gedly pleaded with appellant to stop. And while all this was going on, she even had the presence of mind to look at her watch only to note the exact time when it was happening at 11:00 p.m. and at 3:00 a.m. Certainly the foregoing factual backdrop belies any indicia of rape.

"Rape being a heinous crime naturally subjects the victim to great horror, terror, and fright. But the alleged victim displayed exactly the opposite. For if rape was indeed committed, she would have no concern at all for trivia, such as looking at her wrist watch to establish the exact time.

"The physical examination of appellant failed to disclose any scratch marks or other signs of injuries on his body, except for the wound on his head that admittedly was inflicted by the policeman who tried to arrest him. This negates physical resistance by Wilma to his advances.

"Upon a physical examination of Wilma, on the other hand, the examiner found a lacerated hymen at 6:00 o'clock position and bruise marks on her inner breasts. The examining physician indicated, however, that these marks on the breasts were 'kiss-marks' and the injuries to her genitals were due to extreme force not applied during ordinary lovemaking (tsn. Oct. 10, 1983, pp. 22-25). The findings are thus inconclusive for rape.

"In *People v. Tapao*, 108 SCRA 351, the Court sets the guidelines for appreciating testimony in rape:

"'A charge of rape based upon the sole testimony of the one who complains of rape should be regarded with utmost caution and that the person charged with the offense should not be convicted unless the complainant's testimony is impeccable and rings true throughout.'

"The case at bar falls short of the quantum of evidence required to sustain a conviction of rape thereby creating reasonable doubt as to appellant's guilt therefor."

We agree with the foregoing manifestation and motion. From the earliest years of this Court, it has emphasized the rule that reasonable doubt in criminal cases must be resolved in favor of the accused. The requirement of proof beyond reasonable doubt calls for moral certainty of guilt. It has been defined as meaning such proof "to the satisfaction of the court, keeping in mind the presumption of innocence, as precludes every reasonable hypothesis except that which it is given to support. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely to be true than the contrary. It must establish the truth of the fact to a reasonable and moral certainty - a certainty that convinces and satisfies the reason and the conscience of those who are to act upon it." (Moreno, *Philippine Law Dictionary*, 1972 Edition; p. 379, citing *U.S. v. Reyes*, 3 Phil. 3). By the very nature of the crime, the intrinsic elements of rape usually involve only the accused and the complainant. The actual carnal knowledge of the woman and the use of force or intimidation are difficult to prove through eye-witnesses as the presence of third parties would deter the commission of the crime. Therefore, the testimony of the complainant is not only examined with extra care but it must also be logical, clear, and convincing. The weaknesses and improbabilities in the testimony of the offended party in this case raise reasonable doubts on whether or not the alleged abduction with rape really transpired in the manner described in the complaint and required by Articles 335 and 342 of the Revised Penal Code.

WHEREFORE, the judgment of the lower court is hereby REVERSED and SET ASIDE. The accused-appellant is ACQUITTED on grounds of reasonable doubt.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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