

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR ESQUILLO, ACCUSED-APPELLANT.

G.R. No. 71311. March 31, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The accused-appellant, Cesar Esquillo was charged before the Regional Trial Court, Branch 102, Quezon City, with the crime of rape in a criminal complaint filed by the victim, Dahlia P. Castro, dated October 21, 1983. The complaint reads:

"That on or about the 17th day of October, 1983, in Quezon City, Philippines, the said accused, by means of violence and intimidation, did, then and there, wilfully, unlawfully and feloniously have sexual intercourse with the undersigned DAHLIA CASTRO Y PINGUL, without the consent and against the will of the latter, to her damage and prejudice in such amount as maybe awarded to her under the provisions of the New Civil Code.

"CONTRARY TO LAW." (p. 35, Rollo)

The Solicitor General has summarized the facts of the case as follows:

"On October 17, 1983, at about 4:00 p.m., Dahlia P. Castro, a schizophrenic patient, was in the clinic of Dr. Robert Walter in the UST Hospital for her monthly check-up. (TSN, Feb. 15, 1984, p. 3) While there, Dahlia unwittingly slipped away from her companions (her mother and brother) and wandered about alone in the city streets until she got lost (TSN, Dec. 12, 1983, p. 7). While walking, she noticed that somebody was following her. She looked back and saw that it was the accused (Ibid, p. 10). Suddenly, without any provocation, the accused grabbed and pulled her, forcing her to go with him. Dahlia cried out for help but to no avail (Ibid, p. 11). She resisted from the clutches of the accused but he boxed her several times whenever she struggled (Ibid, p. 9). Frightened and weak, Dahlia could no longer keep up a fight until the accused succeeded in bodily handling her and forcing her inside a house. The accused gave her a drink after which she felt dizzy and fell asleep (Ibid, p.11)

"Taking advantage of Dahlia's unconscious state, the accused ravished her (Ibid, p. 11). When Dahlia woke up the following morning (Oct. 18, 1983), she was raped again. She shouted and cried for help when she saw the accused insert his penis into her vagina, but no one was there to hear her pleas (Ibid, p. 12).

"When they left, the accused forced Dahlia inside a jeepney (TSN, Jan. 11, 1984, p. 10) and he brought her to another house where he raped her again several times (Ibid, p. 10). Dahlia constantly struggled but her attempts to resist were met by blows on her face and body (Ibid, p. 10).

"Sometime later, they departed and both ended up near the vicinity of Quiapo underpass at about 8:30 p.m. While there, Cpl. Manuel Dalumpines (Policeman, Western Police District) spotted them arguing.

"Dalumpines approached them and asked them why they were fighting. Dahlia answered that she did not know this man (the accused) who was forcing her to go with him. (Ibid, p. 5) Hence, Dalumpines took Dahlia and the

accused inside the police station for investigation. From here they were indorsed to the Quezon City Police, it appearing that the latter had jurisdiction over the crime (Ibid, p. 5). The accused was detained but Dahlia was released.

"Dahlia then wandered around by herself until her mother and brother found her the following day at 12:15 a.m., in front of Luzon Restaurant in Quiapo. (TSN, Feb. 14, 1984, p. 4) Dahlia informed them what happened to her and they proceeded to the Quezon City Police Station where Patrolman Edmund Rivera took down the statements of Dahlia and her brother (TSN, Jan. 5, 1984, p. 6). Patrolman Rivera likewise investigated the accused and took down his extra-judicial statement which was read to him before he signed it. (TSN, March 19, 1984, p. 5)." (pp. 2-4, Appellee's Brief)

Upon arraignment, on November 7, 1983, the accused pleaded not guilty to the charge. Trial ensued.

The appellant admits having picked up Dahlia P. Castro at the Quiapo Underpass and taking her to his home. He, however, denies the charge of rape and claims he left Dahlia with his mother, went to his brother's house elsewhere and upon returning home, decided to bring Dahlia to her residence in Project 7, Quezon City but they were apprehended while on a jeepney to Quiapo.

On May 10, 1984, the trial court promulgated its decision finding the accused guilty of the crime of rape. The dispositive portion of the decision reads as follows:

"WHEREFORE, the Court finds accused Cesar Esquillo y Albanilla, guilty beyond reasonable doubt of the crime of rape, and pursuant to Art. 335 of the Revised Penal Code, as amended, hereby sentences him to suffer the penalty of reclusion perpetua, to indemnify the aggrieved party, Dahlia P. Castro, in the sum of P12,000.00 (Art 345), and to pay the costs." (p. 82, Orig. Records).

Not satisfied with the above decision, the accused interposes this appeal.

The accused-appellant claims that the trial court committed the following errors:

I

THE COURT A QUO ERRED IN ADMITTING APPELLANT'S SWORN STATEMENT AS EVIDENCE AGAINST HIM;

II

THE COURT A QUO ERRED IN GIVING CREDENCE TO THE TESTIMONY OF COMPLAINANT;

III

THE COURT A QUO ERRED IN FINDING THAT ACCUSED COMMITTED THE CRIME CHARGED BEYOND REASONABLE DOUBT. (p. 1, Appellant's Brief)

In the first assigned error, the accused-appellant contends that his sworn statement should be held inadmissible against him inasmuch as the same was made without the presence and assistance of his counsel. We agree with the appellant on this point. With the amendment in the Bill of Rights of the Constitution, particularly with reference to the rights of the accused, a discussion of the absence or presence of force, intimidation or duress in extra-judicial confessions has become academic. Art. 3, Sec. 12 of the 1987 Constitution specifically provides that the rights of the accused, among them the right to counsel, cannot be waived except in writing and in the presence of counsel (People v. Pineda and Garcia, G.R. No. 72400, Jan. 15, 1988). In the case of People v. Newman (G.R. No. 45354, July 26, 1988), we specifically reiterated that the waiver must be made in the presence of counsel.

However, even without the questioned extra-judicial confession, evidence against the accused remains strong in the face of the proofs presented by the prosecution. The medical findings of Dr. Dario L. Gajardo of the PC Crime Laboratory, for one, corroborated the victim's assertion that the accused inflicted injuries on her when she resisted his sexual assaults. The multiple contusions, ecchymosis, and abrasions on various parts of her body plus the deep, healing laceration in the hymen confirm the testimony on the sexual assault coupled with force. Thus, even if the confession was set aside, the overriding evidence points to the guilt of the appellant (*People v. Nabaluna*, 142 SCRA 446 [1986]). The fact is that the trial court did not merely rely on the confession at arriving at the judgment of conviction. There were other evidence duly proved.

Anent second assigned error, the accused-appellant insists that the testimony of the complainant should not have been given credence.

Despite the victim's mental ailment, she was shown to be able to perceived, make known her perception and remember traumatic incidents, as testified to by her psychiatrist, Dr. Walter (TSN, Jan. 11, 1984, p. 6). Throughout the trial, her testimony was consistent, clear and convincing. The testimony was replete with details and showed she was coherent while on the stand and could clearly recall the traumatic event she experience. The trial court was convinced from the testimony and other corroborative evidence that the accused was guilty beyond reasonable doubt. There is no reason for us to reverse this finding.

The accused-appellant has likewise failed to show any ill motive which could induce the victim to charge him with such a crime as rape when he himself has stated that he took pity on the girl so that she was bathed, clothed, and fed. Even a mentally ill person would have remembered such kindness.

Oh the contrary, she consistently pointed to the accused as her attacker even when asked on different occasions.

This Court has consistently held that the testimony of a rape victim as to who abused her is credible where she has no motive to testify against the accused (*People v. Lopez*, 141 SCRA 385 [1986]). There was no ill motive of the complainant in filing the rape charge (*People v. Ocampo*, 143 SCRA 428 [1986]).

Lastly, the accused-appellant contends that the trial court erred in finding beyond reasonable doubt that the accused committed the crime. We find the appellant's contention without merit considering that his defense is mainly denial and alibi. The appellant's brief states that he left Dahlia with his mother in Quezon City while he went to his brother's house in Quiapo to sleep there. According to the trial court, however, Esquillo claims he merely went downstairs and slept with his cousins while Dahlia was upstairs with his mother. The Court has ruled that the appellant's alibi cannot stand against the positive identification made by the rape victim (*People v. Mesias, Jr.*, 127 SCRA 792 [1984]). The accused's denial is self-serving. Denial, if unsubstantiated by clear and convincing evidence has no weight in the law.

The appellant's argument that he took care of the victim is of no moment as it would not make him less guilty. It would even tilt the balance against him on account of his having taken advantage of the victim's mental condition.

The appellant likewise contends that the victim might have been raped during the intervening periods that she disappeared thus implying that the injuries and the sexual assault were inflicted at some other place. This argument does not hold water. There is absolutely no evidence that any other person took advantage of Dahlia elsewhere. What matters is that he was positively identified as the rapist and of the rape having been committed before her disappearance from the police station. As aptly stated by the Solicitor General, assuming someone else raped her during her first disappearance and before he picked her up, surely, the accused would have noticed certain peculiar details from her bodily appearance that something untoward happened to her in which case he would have mentioned this during trial to negate his culpa-bility. But he did not.

Not only is the accused's testimony inconsistent on material points. The testimony of the other witness of the defense, who happens to be the mother of the accused likewise showed untruthfulness. The trial court's findings on her credibility show that the mother's testimony was motivated only by the desire to protect her son so that she would do anything to ensure his acquittal. When the court ordered her temporary exclusion from the courtroom, the mother stood up but still lingered inside.

Furthermore, the accused failed to present other witnesses such as his cousin whom he said were with them in the house.

WHEREFORE, the appealed judgment finding the accused guilty beyond reasonable doubt is hereby **AFFIRMED** with the **MODIFICATION** that the aggrieved party is ordered indemnified in the sum of **TWENTY THOUSAND PESOS (P20,000.00)**.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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