

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEODORICO SILFAVAN, ACCUSED-APPELLANT.

G.R. No. 71510. June 30, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court, Branch 23 at Iloilo City, finding the accused-appellant guilty of the crime of rape and sentencing him as follows:

"WHEREFORE, having been found guilty beyond reasonable doubt of the crime of RAPE, the accused TEODORICO SILFAVAN is hereby sentenced to suffer a penalty of RECLUSION PERPETUA and he is hereby further ordered to indemnify the victim by way of moral damages in the amount of P12,000.00.

"And as a consequence of the crime (sic) conviction of rape, he is further ordered to acknowledge the child, Irene Silfavan, and to give support to the said child pursuant to Art. 283 of the New Civil Code." (p. 35, Rollo).

The information filed by the Provincial Fiscal of Iloilo on the basis of the criminal complaint subscribed and sworn to by complainant Josephine Tesoro states:

"That on or about the second week of November, 1979 and succeeding thereafter on February 3, 1980 and then on February 24, 1980, in the municipality of Miagao, Province of Iloilo, Philippines and within the jurisdiction of this Court, the above-named accused armed with a knife by means of force and intimidation and while the victim was unconscious, did then and there wilfully, unlawfully and feloniously have carnal knowledge of Josephine Tesoro a minor, fifteen years of age, against her will and consent. That as a result of the rape, the victim is now pregnant." (p. 24, Rollo).

The prosecution presented complainant and principal witness, Josephine Tesoro; the attending physician, Dr. Irene A. Tillo; Elena Tesoro, mother of the complainant; and Joaquin Tesoro, uncle of the complainant.

The circumstances surrounding the rape are narrated by Josephine and Dr. Tillo whose testimonies are summarized by the trial court as follows:

"On October 17, 1980, Dr. Irene A. Tillo, of Guimbal Emergency Hospital, Guimbal, Iloilo, testified that she examined the complainant Josephine Tesoro on June 30, 1980. Her findings indicated the complainant was pregnant for 23 weeks as per Medical Certificate marked as Exhibit "B" (p. 21, rec.). The examination thus conducted further showed that the complainant suffered ruptured hymen (Ev. for the Prosecution, p. 3, TSN., October 17, 1980). In the course of the said examination, the complainant also revealed to Dr. Irene Tillo that she was raped by the accused Teodorico Silfavan sometime on February, 1980 (Ev. for the Prosecution, p. 1, TSN., October 17, 1980).

"The complainant Josephine Tesoro testified that sometime in the evening of November, 1979, she attended the wake of her late uncle Miguel Tesoro; that at about 9:00 o'clock that same evening, she went home together with Teresita Tesoro, Salvacion Tesoro and Alma Nonato; that before reaching home they parted ways and each of them proceeded to their respective houses; that upon reaching her house and finding the front door

closed, she proceeded to the backdoor; that when she was about to enter the backdoor, the accused Teodorico Silfavan, with knife on hand pointed at her, told her not to shout, otherwise he would kill her; that the accused held her and brought her to a coconut plantation; that she tried to release herself from the accused but failed; that with the use of force and intimidation, the accused raped her; that after the sexual intercourse with her, the accused told her not to tell anybody or he would kill her (Ev. for the Prosecution, pp. 6, 11, TSN., February 16, 1981).

"The complainant further testified that on February 3, 1980 she had a stomach ache while at the seashore helping pull the fishnet; that she went home to defecate; that when she was about to leave the toilet, she saw the accused standing at the door, pushed her back inside, causing her to hit the wall thereby rendering her unconscious; that she felt pain on her vagina upon regaining consciousness, that she saw the accused Teodorico Silfavan covering her mouth and warning her not to tell her family or he would kill her (Ev. for the Prosecution, pp. 12-13, TSN., February 16, 1981).

"The complainant continued with her testimony and declared that at about 7:00 o'clock in the evening of February 24, 1980, the accused grabbed her while she was pumping water in the process of washing her clothes; that the accused grabbed and brought her to his house; that he forced her to lie down and undressed her; that she pleaded for him to stop but it turned to deaf ears; that she fought back and kicked him but to no avail; that after having carnal knowledge with her, the accused warned her not to tell anybody or he would kill her; that the accused even told her to look for a boyfriend and get married if ever she gets pregnant; that she gave birth to a child on October 12, 1980 (Ev. for the Prosecution, pp. 14-15, TSN., February 16, 1981); that because of fear for the accused, she never revealed her horrible experiences to her mother not until the latter discovered her pregnancy; that the accused went to see Joaquin Tesoro, the uncle of the complainant, and Iloilo City Superintendent of Schools, seeking help to settle the rape charges filed against him (Ev. for the Prosecution, p. 17, TSN., February 16, 1981); that she caused the entry of the name of the accused as the father of the child in the record of birth of the child; that the accused did not object to the putting of his name in the record of birth of the child nor attempted to destroy the baptismal and birth certificates of the child (Ev. for the Prosecution, pp. 21-22, TSN., February 16, 1981). (Decision of trial court, pp. 1-4).

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

- I. THE TRIAL COURT FAILED TO APPRECIATE THE FACT THAT COMPLAINANT AND HER MOTHER WERE MOTIVATED BY ILL-MOTIVE AS BORNE OUT BY THE EVIDENCE IN FILING THE RAPE CHARGE AGAINST THE ACCUSED, PARTICULARLY BY MONETARY CONSIDERATION.
- II. THE TRIAL COURT FAILED TO APPRECIATE CORRECTLY THE DEFENSE OF ALIBI BY THE ACCUSED AS SHOWN BY THE EVIDENCE.
- III. THE TRIAL COURT ERRED IN GIVING CREDENCE TO COMPLAINANT'S TESTIMONY BY REASON OF ALLEGED MORAL ASCENDANCY BY THE ACCUSED OVER THE COMPLAINANT, SUCH MORAL ASCENDANCY IS INEXISTENT IN THE EVIDENCE.
- IV. THE TRIAL COURT ERRED IN FINDING THAT THE ACCUSED WENT TO JOAQUIN TESORO TO ASK FOR THE LATTER'S INTERCESSION FOR THE SETTLEMENT OF THE CASE, SUCH FACT IS NOT BORNE OUT BY THE EVIDENCE.
- V. THE TRIAL COURT ERRED IN FINDING THAT THE CHILD WAS THE PRODUCT OF THE ALLEGED RAPES.
- VI. THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED AND IN NOT ACQUITTING HIM, HIS GUILT NOT HAVING BEEN PROVEN BEYOND REASONABLE DOUBT. (pp. 1-2, Appellant's brief).

The trial court acknowledged the "difficult task of sifting truth from falsehood and thereafter determin(ing) the version that shall merit credence and belief" where the only eyewitnesses to the crime are the complainant and the accused themselves. After examining "with greatest care the complainant's story and subject(ing) it to a thorough scrutiny to determine its veracity in the light of human nature, ordinary behaviour, and common experience", the trial court stated that the complainant's story is more deserving of credence. (See Decision of trial court, p. 7).

After going over the records of the case, we find that the trial court did not err as alleged.

The evidence does not sustain the appellant's contention that the filing of the rape charge was motivated by ill-will.

The appellant states that "the threat of the accused against the mother of the complaint (sic) to eject them from his land gave the latter insecurities that led to the filing of the rape charge." (Appellant's brief, p. 16). Apart from the testimony of the appellant when he was already being tried for rape, there is absolutely no evidence to show that he ever threatened to eject the appellant and her mother from his land. We fail to see why the mother of a fourteen-year old child would concoct a story of rape involving her own daughter and the husband of her sister-in-law (bilas in Tagalog) in order to forestall a threatened ejectment suit. The rape charge with its resulting ill-will would hasten their departure from the brother-in-law's lot instead of preventing it.

The other motives behind the filing of a fabricated rape charge are equally difficult to believe. The appellant states that he was accused of rape so he could not get his retirement pay. His own testimony shows that he had already received his lump sum retirement benefits one month before the filing of the case. (TSN., November 19, 1982, pp. 30-31). The appellant claims that the rape charge was intended to force him to give support to the complainant and was a cover-up for her wild behaviour. There is no proof to show and no indication of any reason why he, of all people, should be asked to support the complainant and her child, if he was not the father of the child. The cover-up theory was not given credence by the trial court. There is no basis for us to withhold our usual respect for the factual findings of the trial court insofar as this theory is concerned.

The appellant states that the trial court erred in not appreciating his defense of alibi.

Alibi is a weak defense (*People v. Casundo*, 134 SCRA 197; *People v. Manalo*, 135 SCRA 84; *People v. Deus*, 136 SCRA 660; *People v. Sinaw-ay*, 138 SCRA 221; *People v. Plandez*, 132 SCRA 69; *People v. Aballe*, 132 SCRA 641; *People v. Roallos*, 113 SCRA 584; and *People v. Yutila*, 102 SCRA 264). In the face of the complainant's positive testimony that the accused-appellant was the person who raped her on three occasions, the trial court refused to give credence to the allegations that he was elsewhere on those occasions.

The appellant has failed to show why we should reverse the trial court's rejection of his alibi.

The contention that during the last two weeks of November, 1979, when the first rape took place, the appellant was always with his wife and could not have committed the crime is too unnatural to be a basis for acquittal. It is inherently improbable that a 61 year old retired school teacher would be under the watchful gaze of his wife every minute, even during the nighttime wakes for a deceased first cousin of the wife.

The appellant states that the coconut grove where the rape allegedly took place is within shouting distance of the house where the deceased relative was lying in state and yet Josephine did not shout for help. The complainant, however, testified that when she entered their house through the kitchen door as their front door was locked, her uncle held her hand, pointed a knife at her, and told her she would be killed if she shouted. She was then dragged and pushed to the coconut grove where the rape took place. Josephine Tesoro could not shout because there was the threat to kill her. In fact, after the act was consummated, the uncle told her not to tell anybody or he will kill her.

The appellant states that the second rape allegedly committed while the complainant was unconscious was impossible because the toilet where it took place was only "1/2 square meter in width and length." (Appellant's brief, p. 19). The Solicitor General correctly points out that one would not be able to squat and defecate in a toilet only 1/2 square meter in floor area. The testimony of the complainant shows that the toilet was three meters by three meters in dimensions (TSN., March 2, 1981, p. 14).

The third assignment of error questions the trial court's finding of the appellant's moral ascendancy over the victim. Josephine Tesoro is the daughter of the brother of Mrs. Restituta Tesoro-Silfavan, appellant's wife. She is a niece of the appellant's wife. She is, therefore, a first cousin of the appellant's own children. The complainant and her widowed mother live in a small house which the appellant permitted to be built on his lot, not far from his own house. The appellant testified that he treated Josephine as if she were his own daughter, that he feels they are part of his own family, and that he used to tutor her in her studies (TSN., November 19, 1982, pp. 12 & 37). The complainant was not yet fourteen years old when the first rape was committed. The appellant was a sixty one year old retired school teacher with a certain degree of prominence in their community. The complainant's family has been receiving favors from the appellant. A clear case of moral ascendancy is established by the records (See *People v. Alcid*, 135 SCRA 280; *People v. Erardo*, 127 SCRA 250; and *People v. Alvis, Jr.*, 117 SCRA 362).

The fourth assignment of error refers to an issue involving credibility. The appellant alleges that it was Joaquin Tesoro, related to him and to the complainant, who offered his services to intercede in the affair. On the other hand, Joaquin Tesoro, who was the Division Superintendent of City Schools and former boss of the appellant, testified that it was Mr. Silfavan who went to his house asking for his help in the settlement of the case. The trial court did not err in giving credence to the testimony of Mr. Tesoro. Appellant Silfavan was in need of assistance. He was the one charged with a serious crime. As a former school teacher, it was natural for him to seek the help of the Division Superintendent of Schools. It would have been unnatural for the latter to take the initiative of interceding to effect a settlement.

The arguments of the appellant in his fifth assignment of error are misleading. He alleges that the period from February 3, 1980, the date of the alleged second act of rape, to October 12, 1980, when the complainant's child was born, is only seven months and twenty-one days, which means that the child was born as a premature baby. There is nothing in the record, according to him, to show that the child was prematurely born.

From February 3 to October 12, is eight months and nine days. A child born 8 months and 9 days from conception will look like a full term nine months old baby. He or she does not have to be given the special care of a premature baby. And even assuming the correctness of the appellant's computations, the neglect in presenting evidence of a premature birth does not necessarily mean that there was no such birth. The bone of contention in this case is the forcible act of rape, not the state of the 8 months and 9 days old baby when born.

To show that his guilt was not proved beyond reasonable doubt, the appellant alleges in his last assigned error that - (1) the complainant is impure and unchaste; (2) the complainant did not resist and "short of enjoying the act, she allowed the accused to penetrate at will and ease"; (3) the venue of the November, 1979 rape is unlikely; (4) the complainant's sexual encounter with the accused in November, 1979 was voluntary; (5) there was unreasonable delay in revealing the alleged rape; (6) the complainant appeared to enjoy narrating her experience; and (7) the fact that the accused did not flee shows he is innocent.

The above arguments to show reversible error on the part of the trial court are either self-serving or easily refuted.

The supposed impure and wild behaviour of the 14 year old "probinsiyana" can easily be concocted by the accused. Not one of the supposed "barkadas" or boyfriends was presented as a witness. The "wild" behaviour was not corroborated by a witness more disinterested than the accused-appellant. It is understandable why the trial

court did not accept the story about the 14-year old victim having an affair with her own brother-in-law as a ground for acquittal. Apart from being self-serving testimony, the story is rather improbable.

The allegations that the victim allowed the complainant to penetrate at will and with ease and that the first sexual encounter was voluntary are not supported by the records. The allegations are also contradictory to the appellant's defense that he never touched the girl. The victim was a minor; the appellant exercised moral ascendancy over her; and the threat to kill the complainant was backed by a knife pointed at her. Resistance to rape can be in varying degrees, dependent on the circumstances of the case and of the victim vis-a-vis the assailant.

The delay in prosecuting the rapes is not an indication of fabricated charges. If the complainant did not become pregnant, she probably would never have revealed that she was raped by her uncle. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain rather than reveal their shame to the world or risk the rapists' making good their threats to kill or hurt their victims.

The fact that the complainant did not ask for the exclusion of the people in the courtroom while she was testifying does not signify that she "enjoyed" narrating the rape incident. Josephine Tesoro was asked if she was willing to tell her story with everybody there hearing it. She answered that it was "okay" with her. (TSN., February 16, 1981, pp. 11-12). This does not necessarily mean that Josephine enjoyed having an audience listen to her narration. Not being a lawyer, she was not familiar with the procedure of excluding the court audience during offensive, degrading, or titillating testimony. She could have felt that a different answer might be interpreted to mean that her testimony was untrue if it could not be told with other people around.

In some cases of murder, robbery, or even rape where a person is a prime suspect, his not fleeing may be a badge of innocence. In the present case, however, the crime was committed with impunity on three occasions by one who thought the victim would not complain. Under the circumstances of this case, the appellant would most likely not have been discovered if Josephine did not become pregnant. The appellant did not have to flee.

The assignments of errors have no merit. The trial court did not err as alleged.

WHEREFORE, the appealed decision of the court a quo is hereby AFFIRMED except for the INDEMNITY which is INCREASED to TWENTY THOUSAND PESOS (P20,000.00).

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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