

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HUGO JARZI, ACCUSED-APPELLANT.

G.R. No. 71767. June 30, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.

Gregoria Bisaya is a comely country lass from Tawid, Candijay, Bohol. As she was sick of typhoid during her younger years, she became physically weak and could be easily scared.

On December 7, 1983 when she was on her way home after her daily routine of tending the carabaos of her parents, at about six o'clock in the evening she saw Hugo Jarzi walking towards her. She knew Hugo very well as his common-law wife is the cousin of her mother. Upon approaching her Hugo suddenly took hold of her hands and began dragging her. She was stunned and was gripped with fear more so when Hugo brandished a bolo with his right hand and at the same time threatened to kill her if she should attempt to cry for help. When they reached a canal, Hugo forcibly carried her on his back. He brought her to his hut where he yanked down her long pants, destroying the zipper and forcibly pulled down her panty and removed her T-shirt.

Hugo then took off his clothes and mounted her. She tried to ward off Hugo's advances but this only infuriated him. Cursing her, he repeated the threat to kill her if she should resist further. At that time, Hugo's bolo was on the floor only a half-meter away from him. Hugo then forcibly spread out her legs and with one of his hands guiding his penis, he pushed hard, thus prompting her to shout because of extreme pain. Thus, Hugo was able to satisfy his sexual lust.

Early the following day, Gregoria was brought to the Medicare Community Hospital at Candijay, Bohol for medical examination. Dr. Daisy Estillore, the attending physician who issued the medical certificate^[1] testified that Gregoria was under emotional trauma when she was brought to her for physical examination and that she sustained lacerated wounds in her vagina at the 6 o'clock level. The physician also testified that she complained of severe pain even at the slightest pressure exerted on her thighs and that mucosal discharge was present at her vaginal orifice. She was 24 years old then.

Upon her sworn complaint, an information for abduction with rape was filed by the 3rd Assistant Provincial Fiscal of Bohol in the Regional Trial Court (RTC) of Bohol against Hugo Jarzi.

After the arraignment and trial on the merits, a decision was rendered by the court on June 11, 1985 finding the accused guilty of the offense charged with the aggravating circumstance of nocturnity and sentenced him to reclusion perpetua and to indemnify Gregoria Bisaya in the amount of P10,000.00 as moral and exemplary damages.

The accused interposed this appeal alleging that the trial court committed the following errors:

“1.

THE COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES;

a.)

THAT THE SEXUAL INTERCOURSE WAS NOT THE RESULT OF THEIR MUTUAL AGREEMENT

b.)

THAT THE APPELANT WAYLAID THE VICTIM, AND BY MEANS OF FORCE THREATS AND INTIMIDATION CARRIED HER AGAINST HER WILL TO THE HOUSE OF APPELANT;

c.)

THAT THE APPELANT BY MEANS OF FORCE AND VIOLENCE HAD SEXUAL INTERCOURSE WITH THE VICTIM;

2.

THE COURT ERRED IN DISREGARDING THE FACT THAT THE COMPLAINT AND APPELANT WERE SWEETHEARTS, AND THE SEXUAL INTERCOURSE IS THEIR MUTUAL AGREEMENT;

3.

THE COURT ERRED IN FINDING APPELANT GUILTY OF THE CRIME CHARGED AGAINST HIM."

The appeal is devoid of merit.

Through his sole testimony, appellant claims that he and the offended party were lovers so that the sexual intercourse he had with her on that day, December 7, 1983, was a matter of agreement or consent between them and that there was no force or violence employed by him.

Under the first assigned error, the appellant assails the credibility of the witnesses for the prosecution. He alleges that on the day of the incident, the offended party was sporting a pair of eyeglasses so that if it were true that she was dragged and forcibly carried on the back of the appellant, the eyeglasses must have fallen or could have been broken. Thus, the appellant adds that the logical conclusion is that there was no force or threat involved. The reason must be simply because the force employed by the appellant nevertheless left her eyeglasses intact.

Appellant then avers that the pants with the destroyed zipper[2] are fabricated evidence. He asserts that if the testimony of the victim is true to the effect that she was then "very afraid" because of threats made by appellant, it was unnecessary for the appellant to forcibly pull off her pants. He could have just ordered her to undress.

What the records show is that in spite of the threats, the victim still resisted the bestial advances of the appellant and when he pulled down her pants over her objections, the zipper was destroyed.

Appellant points out that as the bolo was just a half meter away from the place where she was lying down, if complainant really wanted to resist, she could have taken said bolo and defended her honor. Suffice it to say at that moment the victim was suffering from extreme fear. She would not have risked taking the bolo under the very nose of the appellant who was definitely physically stronger than her. Nevertheless, the victim testified that she struggled and pushed appellant so his penis was dislodged.

Appellant also alleges that they were naked when they had sexual intercourse and that this fact demonstrates their mutual desire for sexual intimacy. However, it has already been shown that the victim was forcibly undressed by the appellant.

The testimony of the offended party that she was "waylaid" by the appellant is belied by appellant as without factual basis. Appellant avers that they met only by chance when the animals were being watered. Again, what the records reveal is that it was on her way home at past six o'clock in the evening when the victim saw the appellant apparently waiting for her, who approached her and thereafter committed the said acts that led to her dishonor.

Appellant contends that the victim did not cry out for help even once while she was being forcibly dragged and carried on the back by him.

It must be noted that the place where the appellant waylaid the victim was an isolated one, some 50 meters away from the nearest house. Some corn stalks and other vegetation afforded obstruction to the view. Since the appellant effectively threatened the victim, her fear must have been so great that she was unable to shout for help.

Appellant then argues that the reason that the victim filed a complaint against him although they were sweethearts is to avoid the hatred and anger of her parents. There is no evidence to support this pretension. On the contrary, what appears is that immediately after the incident, the victim revealed to her parents what happened to her and filed the complaint against appellant.

A pair of panties was allegedly given to him as a souvenir by the offended party. That is the parting argument of the appellant. He alleges that he was not able to produce the same because it was lost. It is obviously a concocted story, as his version that he had sexual intercourse in the room of the house where the offended-party even fixed the pillow, the blanket and the mosquito net.

By and large, the question boils down to the credibility of the witnesses and the too well known rule is that it is the peculiar province of the trial court to assess the credibility of the witnesses because of its superior advantage in observing the conduct and demeanor of the witnesses while testifying and its findings shall not be disturbed on appeal unless some facts or circumstances may have been overlooked that may otherwise affect the result of the case. Appellant has not shown any cogent basis to persuade the Court to depart from this rule.

No doubt, the complex crime of abduction with rape has been committed by the appellant as defined and penalized under Article 342 in relation with Articles 335 and 48 of the Revised Penal Code, with the aggravating circumstance of nocturnity. The penalty imposed by the trial court is correct. However, the indemnity to the victim should be increased to P30,000.00.[3]

WHEREFORE, with the above modification increasing the indemnity to the victim the judgment appealed from is AFFIRMED in all other respects, with costs against the accused-appellant.

SO ORDERED.

Narvasa, Cruz, and Griño-Aquino, JJ., concur.
Medialdea, J., on leave.

[1] Exhibit "C".

[2] Exhibit F-1.

[3] People v. Gorgonio Rescano, 132 SCRA 713 (1984).

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