

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSELITO MERCADO Y DEL ROSARIO ALIAS “JOJO MERCADO”, ACCUSED-APPELLANT.

G.R. No. 72726. October 15, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is an appeal from the decision* dated June 13, 1985 of the Regional Trial Court, National Capital Region, Branch 152, Pasig, Metro Manila in Criminal Case No. 49976, finding accused Joselito Mercado guilty of the crime of rape, and sentencing him to suffer a prison term of reclusion perpetua and to indemnify the offended party Marietta L. Pequit in the amounts of P20,000.00 and P10,000.00 for moral and exemplary damages respectively.[1]

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

On March 11, 1982, at about five o'clock in the afternoon, complainant Marietta L. Pequit, 21 years old, left Little Jewel's School in San Isidro, Taytay, Rizal where she worked as an assistant to the school children. With her friend Susan, Marietta walked towards Rizal Avenue on her way home. Upon reaching the municipal hall of Taytay, the two parted and Marietta continued on her way along Rizal Avenue alone. A tricycle drew near. On board was the accused Joselito Mercado alias Jojo, a twenty-one-year old carpenter whom the complainant had known two (2) weeks earlier. He asked her to wait for him. Complainant asked Joselito and the tricycle driver where they were going, but receiving no reply, she went on her way.[2]

When Marietta was in front of Rommie's Kindergarten, the tricycle bearing Joselito returned. It was already past six o'clock in the evening. Joselito invited the complainant to ride with him and offered to bring her to the cockpit where her boyfriend Al was waiting. Marietta refused but Joselito forced her to board the tricycle. She did not make any outcry as there were no people passing by.[3]

The tricycle did not proceed to the cockpit but instead turned towards Meralco Village. Sensing danger, Marietta tried to free herself (“nagpupumiglas”) by trying to jump out of the vehicle but her attempt was foiled by Joselito who was seated at the exit side of the sidecar. She tried to scream but the accused covered her mouth with his hands.[4]

The tricycle headed towards the grassy and unlighted portion of the subdivision. On the way, Marietta heard Joselito and the driver conversing about “magtsutsupi” and when she asked what that was, she was told that it meant “magdadamo”, or to smoke marijuana. Upon reaching the grassy portion, they alighted near two big rocks. Joselito told the driver to move away and the two were left alone. Complainant pleaded with Joselito to bring her home but he refused. She thought of running away but it was impossible. The place was small and completely enclosed by a wire fence and the only way out was blocked by the tricycle.[5]

When they were already alone in that grassy section of the village, Joselito took out a marijuana stick and puffed

it, after, which he clasped Marietta by the shoulders and embraced her. She pushed him away but the accused held her by the neck. She pushed and boxed Joselito while the latter kept hugging her and intermittently kissing her left and right breasts. Then he forced her to lie down on the grass and placed himself on top of her. He raised her skirt and removed her panties with his right hand while his left hand held both her hands. The next thing Marietta knew was that Joselito was penetrating her vagina with his fingers. Despite her struggles, the accused succeeded in copulating with the complainant and she felt a hot substance being discharged into her private organ.[6]

After Joselito was through with the offended party, he was followed by the tricycle driver and then by a “fat man” and then it was Joselito’s turn again.[7] Sated, Joselito returned complainant’s panties and step-in to her and then they all boarded the tricycle and headed towards the “labasan” of the subdivision. When they reached the parking area for tricycles at the “labasan”, Joselito got out saying that he was going home to get some food. But quick as a flash, he hailed a passing jeepney and left the complainant to fend for herself. Marietta then walked home and immediately recounted her experience to her mother who brought her right away to the municipal hall to report the outrage to the police authorities.[8]

On the following morning, March 12, 1982, at about ten o’clock, Marietta was brought to Dr. Gregorio C. Blanco of the PC crime laboratory for physical examination. Dr. Blanco found live spermatozoa in the vagina as well as abrasion of the posterior commissure and vulvar mucosa as disclosed in his medico-legal report. He concluded that his findings were compatible with recent sexual intercourse.[9]

Later that day, Marietta and her mother executed sworn affidavits at the Taytay police station. Of her alleged three attackers, Marietta was only able to identify Joselito Mercado who was placed under arrest on March 12, 1982 and later released on bail.

On the strength of Marietta’s complaint sworn before the municipal judge of Taytay, Rizal, Joselito Mercado alias “Jojo Mercado” with “John and Peter Doe” were charged with rape through force or intimidation in an information dated August 31, 1982 and filed with the Pasig trial court.

The two other alleged rapists were subsequently identified as Rodolfo Andres, Jr. and Romulo de Guzman and the information was correspondingly amended. But despite the issuance of warrants for their capture, they were not apprehended and the trial court ordered the case “archived” against the two malefactors, the same to be automatically revived upon their arrest.[10]

Upon arraignment, Joselito pleaded not guilty and trial proceeded against him. On June 13, 1985, the lower court rendered the judgment of conviction under review.

In this appeal, accused-appellant Joselito assails his conviction and argues that the trial court erred in finding that the offense of rape by force had been committed and in giving weight and credence to the uncorroborated testimony of the offended party.[11]

In his appellant’s brief, Joselito contends that the nature and degree of violence employed on Marietta were alleged only in general terms and would not suffice to sustain a conviction for rape through force. In other words, from the victim’s narration of the events leading to the sexual attack, there is no concrete evidence that Joselito had actually used physical coercion to have sexual intercourse with the offended party.

Whether or not the carnal knowledge of the victim was free and voluntary as averred by the accused is largely a question of credibility. On this point, we defer to the findings of the lower court which is conceded to be in the best position to assess the demeanor and deportment of the witnesses.[12] The court a quo observed that the complainant testified in a straightforward manner. Her answers were logical and natural. She testified that she fought and boxed Joselito when the latter, high on marijuana, embraced her and kissed her breasts. She also stated

that she pushed and resisted him when he sexually assaulted her, first with his fingers and then, with his private organ.

Marietta's credibility is in no way impaired by the absence of external physical injuries or "chikanini" on her body in the aftermath of rape. The force employed in rape need not be so great or of such a character that it could not be repelled. It is only necessary that the force used by the accused be sufficient to consummate his purpose.[13]

If there was no actual physical force exerted on Marietta, there was certainly intimidation. She was brought to a secluded portion of the subdivision. There were no lamp posts to illuminate the place. To escape was futile because her way was blocked. The remoteness of the place, the constant threats of bodily injury, the futility of escape, and the hands of the accused covering her mouth to prevent her from shouting --- all these created an atmosphere of dread. It could be said that the offended party yielded because apprehension and sheer raw fear that she would be seriously harmed or even killed if she resisted.

In a further effort to discredit Marietta's testimony and in the process exculpate himself, Joselito called attention to the fact that, contrary to her claim, Marietta was no longer a virgin at the time she was allegedly raped. While this physical condition was supported by medical findings, it has no bearing on the case, except perhaps to show a minor lapse in complainant's testimony. Keeping in mind the high premium that the Filipino males place on a woman's virginity, the Court can readily understand the victim's reluctance to admit that she has had sex even before marriage. At any rate, we have also held that unchastity is not a defense in the crime of rape.[14] Moreover, if the rape charge was unfounded and a mere fabrication as conjectured by the defense, Joselito did not adduce evidence to at least show that the complainant had a sinister motive in filing the case against him. On the contrary, the victim's behavior after her harrowing experience belied the claim that everything was just a sham. She promptly reported the crime to the authorities and submitted herself to a medical examination, all within a span of twenty-four (24) hours her traumatic experience. And as oft-stated in an endless number of cases, no woman in her right mind would subject herself to the shame and humiliation of a public trial for rape if she were not motivated by a sincere desire to see that justice is done.[15]

For his part, Joselito took flight, only to be rearrested later in Barangay Matalatala, Mabitac, Laguna and turned over to the jurisdiction of the court on May 2, 1985.[16] In a good number of cases, flight of the accused was taken to signify a strong sense of guilt and an awareness that he has no tenable defense.[17]

Finally, the defense claims that Joselito was denied the opportunity to present his evidence because the case was resolved mainly on the basis of the evidence presented by the prosecution. This is untenable. Every chance was given to the accused to refute the charge against him but instead he chose to jump bail, leaving his counsel with no other option but to manifest in open court that, in view of his inability to present any evidence because of his client's disappearance, he be allowed to submit a memorandum in lieu of such evidence.[18] Be that as it may, with the presence of his counsel at every stage of the proceedings and the actual cross-examination the prosecution witnesses, it cannot be claimed that there was a miscarriage of justice through denial of due process.

In view of the foregoing, the Court is convinced that the guilt of the accused-appellant Joselito Mercado for the crime of rape through force or intimidation under Article 335(1) of the Revised Penal Code has been proved beyond reasonable doubt. Absent any modifying circumstances, the penalty of reclusion perpetua was properly imposed.

WHEREFORE, the decision of the trial court is hereby **AFFIRMED** in toto. Costs against the accused-appellant.

So ordered.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Feliciano, J., on leave.

* Penned by then Judge, now Court of Appeals Associate Justice, Josue N. Bellosillo.

- [1] Original Records, p. 242.
- [2] TSN, pp. 63-66, December 2, 1983.
- [3] TSN, pp. 66 and 83, December 2, 1983.
- [4] TSN, p. 5, December 2, 1983.
- [5] TSN, pp. 9-10, 84, December 2, 1983.
- [6] TSN, pp. 8, 10-15, December 2, 1983.
- [7] TSN, p. 16, December 2, 1983.
- [8] Original Records, pp. 6-7.
- [9] TSN, pp. 6, 31-32, January 6, 1983; Original Records, p. 12.
- [10] Original Records, pp. 159 and 222.
- [11] Rollo, p. 54.
- [12] *People v. Taduyo*, Nos. L-37928, September 29, 1987, 154 SCRA 349.
- [13] *People vs. Villarosa*, 4 Phil. 434; *People vs. Ronquillo*, G.R. No. 76213, April 6, 1990; *People vs. Abonada*, G.R. No. 50041, January 27, 1989, 169 SCRA 530; *People vs. Sarile*, No. L- 37148, June 30, 1976, 71 SCRA 593; *People vs. Momo*, 56 Phil. 86.
- [14] *People vs. Ramos*, No. L-49218, August 27, 1987, 153 SCRA 276; *People vs. Torre*, 62 Phil. 942.
- [15] *People vs. Abonada*, *supra*.
- [16] Original Records, p. 227.
- [17] *People vs. Vengco*, Nos. L-31657 and 32264, January 31, 1984, 127 SCRA 242; *People vs. Millarpe*, G.R. No. 69282, February 25, 1985, 134 SCRA 555; *People vs. Pimentel*, No. L-47915, January 7, 1987, 147 SCRA 25.
- [18] Original Records, p. 212.

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