

SOTERO COLLADO, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT, THE SOLICITOR GENERAL, AND HELEN TUBAY, RESPONDENTS.

G.R. No. 72780, February 13, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the decision* of the then Intermediate Appellate Court in AC-G.R. No. 000834 which affirmed with modification the decision** of the Regional Trial Court of Tarlac, Tarlac (Branch LXIV) in Criminal Case No. 3235 convicting herein petitioner Sotero Collado of the crime of Attempted Rape.

Petitioner Collado was charged with the aforementioned crime in a criminal complaint dated December 29, 1981 filed by private respondent Helen Tubay which reads as follows:

"That on or about September 21, 1981 at Barangay Bantog, in the Municipality of Victoria, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully, unlawfully and feloniously and by means of force and intimidation, commence the commission of the crime of rape directly by overt acts, to wit: while Helen Tubay, a married woman was sleeping in their house with her five (5) year old child the said accused without permission of anyone entered her house; lay an top of the said undersigned, embraced, kissed and touched her breast and lifted her skirt with the intent of having carnal knowledge of her by means of force and threats to kill her with a gun and if said accused did not accomplish his purpose, that is, to have carnal knowledge of the said undersigned, it was not because of his voluntarily (sic) desistance but because the offended party succeeded in resisting the criminal attempt of the said accused and because of the timely arrival of her parents who responded to the loud cries of her five (5) year old child for help.

Contrary to law."

(Exhibit "B", Original Records, p. 1)

A preliminary investigation was conducted by Assistant Provincial Fiscal Rizal B. Perez and based on his finding that a reasonable ground to believe that the accused committed the crime exists, a warrant of arrest (Original Records, p. 4) was issued and the bailbond was fixed at P10,000.00 (Ibid., p. 3). Petitioner Collado posted the bond (Ibid., p. 7) and upon arraignment on March 25, 1982, entered a plea of not guilty (Ibid., p. 18). Thereafter, trial ensued.

The prosecution presented as witnesses the complainant, Mrs. Helen Tubay, Pat. Leon Apolonia, Dr. Ricardo Ramos, Pat. Alfonso Gagarin and Bernabe Tubay, Jr. while the defense presented petitioner Sotero Collado and his nephew Feliciano Collado as witnesses.

Helen Domingo Tubay, married to Bernabe Tubay and a public school teacher at the Bantog Elementary School in Bantog, Victoria, Tarlac, testified that on the night of September 21, 1981, while she was sleeping in their house with her five (5) year old son, Bernabe Tubay, Jr., she felt someone on top of her, smelling of liquor and

embracing her. When she opened her eyes, she saw petitioner Sotero Collado on top of her, pointing a short gun at the left side of her neck. She was able to clearly see petitioner Collado and the gun as the room was lighted by a gas lamp (kingke). Petitioner Collado then threatened her not to shout or else she would be killed. Thereafter, he raised her silk nightdress to her waist and started to remove his pants. She then pinched her son Bernabe Tubay, Jr. who gave out a loud cry. At the same time, she also fought off the petitioner by pushing him. The latter stood up and left passing through their living room. The following day, she reported the matter to their Barangay Captain, Policarpio Cuaresma. Her parents advised her to see her husband who was then working as a security guard at the U.P. College in Baguio City. Upon the advise of a lawyer, they filed a complaint (Exhibit "B", Original Records, p. 1) against petitioner for Attempted Rape. Witness further testified that petitioner Collado must have entered their house by destroying the screen of their window in the kitchen and bending the two bars to allow passage (Exhibit "A", Original Records, p. 50) (TSN, Hearing of May 19, 1982, pp. 4-17).

Pat. Leon Apolonio, a policeman assigned at Victoria, Tarlac, testified that on page 330 of their police blotter, Pat. Gagarin made Entry No. 81365 dated September 23, 1981 which reads:

"That on or about 17 hundred hours, 23 September 1981, Mrs. Helen Tubay y Domingo, 39 years old, married, teacher in profession, and a resident of Brgy. Bantog, this municipality, appeared and reported personally to this station that on or about 12:00 o'clock midnight of September 21, 1981, one Sotero Collado, resident of the same place, forcibly entered their house and pointed his gun to her and saying 'I'll kill you if you shout!'"

A certification was prepared regarding said entry in the blotter and marked Exhibit "D" (Original Records, p. 52) (TSN, Hearing of October 19, 1982, pp. 3-8).

Dr. Ricardo Ramos, of the Tarlac Provincial Hospital, testified that on September 23, 1981, Mrs. Helen Tubay came to the Tarlac Provincial Hospital for physical examination. As shown in the medical certificate (Exhibit "C", Original Records, p. 51) which he issued to Mrs. Tubay, the latter sustained an abrasion at the neck about two and a half inches in length. He further testified that such an abrasion could have been caused by a piece of wood, a metal with a rough surface or a piece of stone (TSN, Hearing of October 19, 1982, pp. 19-26).

Pat. Alfonso Gagarin, a member of the INP, Victoria, testified that on September 23, 1981, Mrs. Helen Tubay came to the municipal building to report that on September 21, 1981, at about 12:00 midnight, Sotero Collado forcibly entered their house, pointed a gun at her and said "If you shout, I'll kill you". He recorded the report in his personal booklet. He was not able to complete the report as Mrs. Tubay was then in a hurry to leave. She promised to return the following day but failed to do so. He nevertheless submitted the report to be finalized (TSN, Hearing of March 16, 1983, pp. 3-6).

Bernabe Tubay, Jr., son of Mrs. Helen Tubay, testified that on the night of September 21, 1981, he saw his mother fighting off petitioner Collado while in a lying position. He further declared that their room was lighted by a gas lamp enabling him to clearly see petitioner. It was the first time that he saw petitioner Collado in their house (TSN, Hearing of April 6, 1983, pp. 2-5).

Petitioner Sotero Collado, a resident of Victoria, Tarlac, denied the accusation made by Helen Tubay and declared that on the night of September 21, 1981, he was at Amacalan, Gerona, Tarlac with Eduvigis Valdez, Miller Valdez, Florentino Valdez, and Bening Yangco to visit Mr. Orbel Mauricio. From there, they proceeded to the house of his late Aunt Sabel Valdez in Abagon, Gerona, Tarlac where they stayed for some thirty (30) minutes. They next went to the house of Bening Yangco in Pura. The latter's house is about six (6) kilometers from the house of his Aunt Sabel and they negotiated the distance in about ten (10) minutes by a tricycle owned by Florentino Valdez. They left Bening Yangco's place at about 10:30 in the evening and proceeded to Bantog. They parted ways at the Barangay Proper Crossing. He reached his house at about 11:00 in the evening (TSN, Hearing

of April 19, 1983, pp. 8--12).

At home, he was informed by his wife, Susana, that their eldest daughter Victa had a stomach ailment. They brought the child to Dr. Crisostomo Carlos' Clinic for treatment. They stayed in said clinic for about two (2) hours since there were other patients who came ahead of them. Among the people he saw at the clinic were Isabelo Marquez and his nephew, Feliciano Collado. They went home at about 2:00 in the morning after his daughter was given an injection and a prescription (Ibid., pp. 13-15).

When asked about the possible motive of Mrs. Helen Tubay for accusing him of such a serious crime, he said that Mrs. Tubay is probably angry at him because he confronted her about the complaints of some parents regarding her frequent tardiness. He received said complaints when he was the Auditor of the Parents-Teachers Association of the Bantog Elementary School and the Barangay Captain of the place sometime in 1964-66. The last time he confronted her about these complaints was in 1981 before the date of the alleged crime (Ibid., pp. 3-8).

Feliciano Collado, nephew of petitioner Sotero Collado, corroborated the latter's testimony that he was at the clinic of Dr. Carlos on September 21, 1981. He testified that petitioner Collado came with his wife and their two (2) year old daughter (TSN, Hearing of September 19, 1983, p. 3). He, however, did not have a chance to talk with his uncle as they were at a distance from where he was seated. They merely acknowledged each other's presence by winking an eye. He left ahead of petitioner Collado as he was the third patient in the line when his uncle came (Ibid., pp. 2-9).

On February 6, 1984, the Regional Trial Court of Tarlac (Branch LXIV) rendered judgment, the decretal portion of which reads:

"WHEREFORE, the Court finds accused Sotero Collado guilty beyond reasonable doubt of the crime of Attempted Rape, as defined and penalized under Article 335, in relation to Article 51, both of the Revised Penal Code, and in the absence of any modifying circumstances, hereby sentences him to an indeterminate penalty ranging from Two (2) Years, Four (4) Months and One (1) Day of Prison Correctional, as minimum to Six (6) Years and One (1) Day of Prison Mayor, as maximum, with the accessories provided by law, and with credit for preventive imprisonment undergone in accordance with Article 29 of the Revised Penal Code, as amended by Republic Act 6127, and to pay the costs.

Tarlac, Tarlac, February 6, 1984."

(Original Records, pp. 136-137)

Petitioner Collado appealed the decision to the Intermediate Appellate Court which affirmed the judgment but modified the penalty imposed by increasing the maximum penalty to eight (8) years and one (1) day of prison mayor (IAC, Decision, Rollo, p. 23).

Hence, this petition.

On January 13, 1986, the Second Division resolved to deny the petition for lack of merit (Rollo, p. 43). Petitioner Collado filed a Motion for Reconsideration (Ibid., pp. 50-51), hence, on January 16, 1989, the same division gave due course to the petition and required the parties to submit their respective memoranda (Ibid., p. 55). Public respondent complied with the Court's order on February 27, 1989 (Ibid., p. 57) while the petitioner complied on March 8, 1989 (Ibid., p. 72).

The issue to be resolved in this petition is whether or not the guilt of petitioner Collado has been established beyond reasonable doubt.

Petitioner Collado contends that the delay of the complainant in lodging the complaint renders doubtful the

veracity of the charge considering that there was no threat exerted on her as an adult public school teacher. The incident took place on September 21, 1981 but the complaint was lodged about three (3) months after. Furthermore, the discrepancy in the police report and the complaint militates against the conviction of petitioner Collado. When complainant reported the incident to the police, no mention of the crime of attempted rape was mentioned. However, the complaint filed was for the crime of attempted rape. Her unexplained failure to account for such accusation of attempted rape at the earliest opportunity lends transparency to her charge since this is an admission against interest (Memorandum for the Petitioner, Rollo, pp. 75-76).

The petition is devoid of merit.

Firmly entrenched is the rule that conclusions and findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and valid reasons because the trial court is in a better position to examine the demeanor of the witnesses while testifying on the case (*People v. Lutanez*, 192 SCRA 588 [1990]; *People v. Tasarra*, 192 SCRA 266 [1990]).

Collado's contention that complainant's delay in lodging the complaint renders the veracity of the charge doubtful is without merit. This has been debunked by the positive declaration of the prosecution witnesses regarding his identity and participation in the crime (*People v. Beringuel*, 192 SCRA 561 [1990]). Complainant Helen Tubay positively identified petitioner Collado since the room was illuminated by a gas lamp. Her son, Bernabe Tubay, Jr., likewise testified that he clearly saw petitioner Collado since the room was lighted by a gas lamp. The lighting produced by a gasera enables one to identify positively persons in the dark of the night (*People v. Paringit*, 189 SCRA 478 [1990]). Moreover, it has been held that the testimony of children of sound mind is likely to be more correct and truthful than that of older persons so that once established that they have fully understood the character and nature of an oath, their testimony should be given full faith and credence (*People v. Pedrosa*, 169 SCRA 546 [1989]).

Petitioner Collado's main defense is alibi. He alleged that he was at the clinic of Dr. Carlos on the night of September 21, 1981 which is about seven (7) kilometers from the house of the complainant Helen Tubay. He did not have the chance to pass by her house as he went to the house of his nephew who had a tricycle which he himself drove (TSN, Hearing of April 19, 1983, p. 16). Defense of alibi is inherently weak and cannot prevail over the positive identification of the accused. For such a defense to succeed, the accused must establish physical impossibility and improper motive of the prosecution witnesses, which matters the accused failed to prove (*People v. Calixto*, 193 SCRA 303 [1991]). The testimony of Feliciano Collado does not carry much weight as he is the nephew of the petitioner. Alibi is weak if it is established by the accused himself and his immediate relatives and not by credible persons (*People v. Beringuel*, supra). As aptly observed by the Court of Appeals, the accused could easily have presented Dr. Crisostomo Carlos to corroborate his version but he did not. Besides, unless more proof is given, it is difficult to conceive of a provincial doctor's clinic filled with several patients at MIDNIGHT.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

* Penned by then Associate Justice Emilio A. Gancayco and concurred in by Associate Justices Federico B. Alfonso, Jr. and Lorna S. Lombos-de la Fuente.

** Rendered by Judge Arturo U. Barias, Jr.

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