

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROUBEN CORRAL Y HERNANDEZ, ACCUSED-APPELLANT.*G.R. No. 73604. January 29, 1988*

Ponente: NARVASA, J.

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Once again this Court is confronted with the question, regrettably familiar, it seems, of whether in the case at bar there had been a forcible sexual assault upon a trustful maiden by a man in the grip of bestial passion, or simply a lustful coupling by two consenting adults.

Josephine Menghamal, a nutrition graduate of the Aquinas University at Legazpi City, wished to move to Manila and there pursue her career. Her strong-willed father would have none of it, however, insisting that she remain in Legazpi to assist in the family store. Her ambition was stronger than her sense of filial loyalty. She resolved to defy her father.

On November 15, 1981, 23-year old Josephine left her home and went to the house of Rouben Corral and his family. Rouben Corral was then a member of the PC-INP at Legazpi City. He was married to Imelda Petilos, the sister of Josephine's closest friend, Techie Petilos. Techie used to live with the Corrals until she had gone to Manila; and Josephine had frequented the Corrals' home at the time that Techie had been residing there. Josephine had thus become quite close to the Corrals and had in fact become the ninang of a son of the Corrals, Rommel, at the latter's confirmation.[1] Josephine confided her plans to Rouben and his wife. The spouses agreed to help her. They suggested that Josephine reside with them for a while instead of proceeding directly to Manila. They surmised that Josephine's father, on noting her disappearance, would soon recall that her close friend, Techie, was staying in Manila and would immediately go there.[2]

The Corrals first thought of hiding her at the residence of Rouben's brother, Alfredo, and in fact took her there, at Buaguis, Legazpi City. But after Josephine had stayed with Alfredo for one day, Rouben and Imelda Corral changed their minds and brought her back to their home.[3] There Josephine dwelt from November 17, to December 23, 1981.

Her sojourn at the Corrals' residence ended on December 24, 1981. On that day, Josephine showed up at the house of her friend, Mercy Bernaldez, at Arimbay, Legazpi City, and told Mercy that Rouben had violated her.[4] In the evening she had Mercy call for another friend, Eleanor Echalas, who was Rouben Corral's niece. When Eleanor came, Josephine also told her of her terrible ordeal.[5]

Josephine was submitted to medical examination by her family on December 28, 1981.[6] The examination was conducted by Dr. Luzviminda Morales, Assistant City Health Officer of Legazpi City, whose findings[7] were as follows:

"Contusions around hymen. Lacerations hymen at 5 o'clock and 9 o'clock positions - could not be ascertained as to healing stage because of fresh blood oozing from the vagina due to menstrual flow. Finger cannot be inserted with ease because of complaint of pain even on light touch."

On February 25, 1982 Rouben Corral was indicted for rape before the Court of First Instance of Albay upon complaint of Josephine.[8] And after trial, Rouben was found guilty of the crime beyond reasonable doubt and sentenced, by judgment promulgated on November 20, 1985, to suffer the penalty of reclusion perpetua, and to indemnify the offended party in the amount of P3,016.70 for hospitalization expenses and doctor's fees; P3,000.00 for attorney's fees; P30,000.00 as moral damages, and P5,000.00 as exemplary damages.[9]

Rouben Corral has brought this case up to this Court on appeal, basically questioning the sufficiency of the evidence of the State on which his conviction was founded.

A review of the record discloses, as was intimated in this opinion's opening paragraph, two diametrically opposed versions of the material occurrences. As against the proposition espoused by the State that after the appellant's wife and children had left on a trip to Manila in the afternoon of the 23rd of December, Josephine Menghamal had been forced by the appellant to have sexual intercourse with him twice in the evening of that same day, the latter claims that their acts of coupling -- he confirms that there had actually been two (2), despite the fact that Josephine was menstruating at the time -- had not only resulted from their mutual consent and desire, but had been initiated by Josephine herself; what happened, according to him, was that after having put on some make-up, and thereafter switching off the television set which they had been watching together, Josephine had said to him, "Uncle Ben, let us sleep now"[10], and this had started the whole thing.

Josephine testified that on December 23, 1981, Imelda and all her children, five in number, had made ready for a trip to Manila. Together with Rouben they all left the house for the bus station at about 5 o'clock in the afternoon, leaving Josephine alone in the house but assuring her that they would try to get a ticket for her, and if they succeeded in doing so, would send a tricycle to fetch her and bring her to the terminal. Josephine was also told that in anticipation of the possibility that no berth could be obtained for her, they had arranged for two of her friends, Marites Corral and Eleanor Echalas, to come and keep her company.[11]

Rouben returned at about 8 P.M. and from him Josephine learned that no ticket could be bought for her, that Imelda, Rouben's wife, and the children had gone on the bus to Manila. Rouben also told her that her friends, Marites and Eleanor, would be coming as he had already sent word to them.[12] After waiting for a while, Josephine changed her clothes, set the table, and took supper. She then seated herself on the sofa at the sala to wait for her friends.

At about 9 o'clock, she went to her room to get some medicine for her asthma. Suddenly she felt Rouben's arms on her shoulders. She turned and fled to the sala. Rouben followed her, and grabbed her. He kissed her on the lips at the same time placing his gun at her temple. She resisted and tried to free herself. He gave her a strong blow above her abdomen. She fell to the floor. He picked her up, placed her on the sofa and again pointed his gun at her temple. She saw that the gun was his service revolver. Despite her resistance, he placed himself on top of her. She pleaded with him to stop, that he should not violate the great trust she had reposed in him, to no avail.[13]

Rouben dragged Josephine to her room, locked the door and shoved her down to the bed. She could not shout because Rouben had his gun out and threatened to shoot her if she shouted, or later told her father about the incident. Employing intimidation and force, and uttering amorous words at the same time, Rouben succeeded in removing her trousers and panties, as well as the sanitary napkin she had on as she was then menstruating. He parted her legs and had intercourse with her twice.[14]

In the early morning of the 24th, Josephine told Rouben she was feeling very weak, she could not "bear it any more," and asked for a glass of milk. When Rouben went out to buy some milk, Josephine fled from the house, took a tricycle and, as earlier stated, went to the home of her friend, Mercy Bernaldez, at Arimbay, Legazpi City, to whom she tearfully narrated her dreadful experience.[15] She also asked Mercy to call for another friend,

Eleanor Echalas, a niece of Rouben, and when Eleanor came that evening, she told her too of her rape by Rouben.[16]

As also earlier narrated, Josephine was examined on December 28, 1981 by Dr. Luzviminda Morales who thereafter set down her findings in writing.[17]

Josephine subsequently suffered a nervous breakdown and had to be confined at the Aquinas University Hospital from March 15 to 22, 1982.[18] She underwent psychiatric treatment under Dr. Salvador Sambitan. Dr Sambitan testified that he had found Josephine to be suffering from depression psychosis as a result of the rape, characterized by slow mental functions and some suicidal tendencies.[19] Josephine later engaged the services of a lawyer to undertake the prosecution of her complaint against Rouben Corral, inclusive of her claim for moral and exemplary damages, to whom she had bound herself to pay an acceptance fee of P3,000.00 and P150.00 per appearance.

Josephine's friend, Eleanor Echalas, testified for the prosecution. She declared that she arrived at her home quite late on the 23rd of December, 1981 at which time her mother had told her that her uncle, Rouben, wanted to see her.[20] The following morning, at around 9 o'clock, she had gone to Rouben's house at Alegre Street but found it closed. But later that morning, at about 10:30 o'clock, she had seen her uncle Rouben near St. Jude Pharmacy, and asked him about Josephine. Rouben said he did not know as he had left his house in the early morning to see his wife and children off at the Pantranco terminal, but thought that Josephine might have gone to her (Eleanor's) house. That evening, Mercy Bernaldez fetched Eleanor and brought her to the Bernaldez residence where (as aforesaid) Josephine had taken refuge. When Eleanor saw Josephine, she noted her pallor and evidently weakened physical condition. Josephine told Eleanor that she had been raped by her uncle Rouben. Among the details recounted to Eleanor by Josephine was that in the course of her struggle with Rouben, she had bitten his lips.[21]

Eleanor further declared that her uncle Rouben had come to her house at Gogon, Legazpi City, three days afterwards. He had shown up at about 9 A.M. on December 27, 1981. He was looking for Josephine. She told him she did not know where Josephine was. But Rouben tarried, and even took lunch with Eleanor and her mother, leaving only at 2:30 that afternoon. While there at Eleanor's home, Rouben had been looking all around, apparently suspicious that Josephine might be hidden somewhere in the house. On this occasion, Eleanor had noticed a wound on Rouben's lips, in process of healing; this brought to mind what had been told to her by Josephine: that she had bitten Rouben's lips while struggling with him.[22]

Josephine's older brother, Ramon Menghamal, who lives separately from his parents, also took the witness stand and declared that at about 1 o'clock in the morning of December 28, 1981, Josephine had arrived at his house, crying and in an apparent state of shock. She could not tell him, at first, how she had fallen into such a condition. But after a time he was able to draw from her the cause of it all: she had been raped by Rouben Corral; and she had found it difficult to reveal the wrong done to her at once, because she was fearful of her life and the safety of her family in view of Rouben's threats. They had afterwards told their father of Rouben's crime and they had decided that Josephine should file, as she afterwards did file, the corresponding criminal complaint against him.[23] Ramon confirmed, too, his father's character of rigid sternness, and stated that it would really be in his nature to insist on Josephine's assisting at their store instead of transferring to Manila to work as a nutritionist.[24]

It was upon this evidence which, in the Trial Court's view had not been negated or debilitated by the appellant's proofs, that the latter's conviction of the crime of rape beyond reasonable doubt was predicated. This Court is now urged by the appellant to accept his version of the facts as more veracious and consequently reverse the Lower

Court's verdict and direct his acquittal.

His own account of the material occurrences has already been generally limned earlier in this decision. What had happened, according to him, was that on December 23, 1981, Josephine had asked to go with him and his wife and children to Manila, where they were planning to spend the Christmas vacation;[25] that he had in fact applied for vacation leave for that period and turned over his service pistol to the property custodian of the Legazpi City Police Station, Marilyn Jacobo, who had issued a receipt to him in acknowledgment of the deposit of the firearm;[26] that unaccountably, Josephine backed out from the trip to Manila, and told them she would leave the house as soon as her friends arrived; that when Rouben and his family departed that afternoon, Josephine was instructed by Imelda, Rouben's wife, to turn off all the lights and lock the windows and main door on leaving the house;[27] that however, Rouben was not able to make the trip to Manila because he learned at the bus terminal that the police had been placed on "red alert" and his application for a pass had been disapproved; that after seeing his family off, he had proceeded to the police station at around 7:00 P.M. to retrieve his service revolver but had been unable to do so because the custodian, Marilyn Jacobo, had already gone home.[28]

Rouben further said that he arrived at his home at about 9 o'clock that evening and had been surprised to see Josephine still there, seated by the door; he had assumed she had already gone because the lights were off and the door locked. He remarked, "Oh, so you are still here," and she had answered, "Yes, I was not able to leave." [29] Josephine had then set the table and they took supper together, after which Josephine turned on the TV set and they watched some programs together. At 10 o'clock, Josephine put on some make-up; and after two minutes, turned off the TV set and said, "Uncle Ben, let us sleep now." Rouben took this as an invitation for them to sleep together.[30]

They then repaired to the Corral's bedroom. There they made love. According to Rouben, they had sex twice; the second, after taking some time out to take coffee, and after he had asked her if she still wanted to do it and she had said, "Yes, I still want it." [31]

Imelda Petilos-Corral, Rouben's wife, took the witness stand in an effort to exculpate him. She sought to depict Josephine as a flirt; that she had caught Josephine touching her husband's legs during meal time; and once, Josephine had insisted on sleeping with her and her husband in their room.[32] She also recounted how she had been so enraged on learning of the supposed rape that she had slapped her husband. Her anger quickly vanished, however, when Rouben swore to her that he had not in fact raped Josephine, and their intercourse was the result of their mutual desire.[33] Imelda was told, too, that Josephine had filed the complaint for rape only as a means of coercing Rouben to leave his family and live with her.[34]

Police Officer Marilyn Jacobo affirmed before the Trial Court that Rouben had indeed deposited his service pistol with her in the afternoon of December 23, 1981, on the occasion of his application for leave to travel with his family to Manila.[35] She acknowledged having accepted the deposit and issued the receipt despite knowing that Rouben's application for emergency leave had been disapproved on account of a "red alert." [36]

A review of the record convinces this Court of the correctness of the Trial Court's verdict. The evidence establishes the appellant's guilt of the felony of rape beyond reasonable doubt. Josephine's testimony is straightforward, candid, consistent, and justifies the trial Court's assessment of her as "truthful and sincere when ** narrating the harrowing experience she underwent under the vicious hands of the accused." Her testimony finds substantial corroboration as regards the material events immediately after the rape, in the sworn declarations of the other prosecution witnesses -- Mercy Bernaldez, Eleanor Echalas, Ramon Menghamal, Dr. Luzviminda Morales -- whose credibility has not been shown to be questionable in any way. One of said witnesses, Eleanor Echalas, the appellant's own niece, has even furnished circumstantial corroboration of a detail in the actual

perpetration of the crime; i.e., as to Josephine's claim that she had bitten Rouben's lip while struggling with him; Eleanor testified that some four (4) days after the date of the crime, she had observed a wound that was healing on Rouben's lips.

This Court also finds correct the Trial Court's rejection of the defense theory that Josephine was not an unwilling victim because she had not shouted for help or otherwise offered such resistance as might be expected of a rape victim. "Perhaps," the Court said, "the complainant could have shown greater physical resistance ** to the advances of the accused. Another woman would have probably tried to fight him off, shouted at the top of her voice even to the jeopardy of life or limb. But not all women are of the same mettle. What is clear and undisputable here is that Josephine was far from being a willing victim; and, if her protestations lacked vigor and vehemence, it was because of the fact that the accused was a policeman, strong in build and armed with his service revolver to cow her to submission. If there was no appreciable force employed, definitely there was intimidation." [37]

The absence of any discernible trace of a fist blow on Josephine's abdomen is of no moment. The medical examination on Josephine was after all conducted after five days from the rape, at which time no visible signs thereof might be expected any longer. [38]

The defense theory of a consented conjugation between Rouben and Josephine, apart from being completely at odds with the more credible version of the facts demonstrated by the State's evidence, is in itself improbable and implausible. The defense paints Josephine as a wanton wench, making lascivious advances on a married man, the brother-in-law of her very close friend, right in his own home, uncaring of the presence and observance of his wife, so depraved and lewd as to crave and invite intercourse even with menstrual blood flowing from her. Apart from the appellant's assertions, and his wife's, there is nothing in the record showing the depiction to be even remotely true. On the contrary, that description is forcefully belied by the recorded evidence of Josephine's pertaining to a family of more than modest means, her upbringing by a stern father, her relatively high educational attainment, her having been some sort of a campus beauty during her student days, her having not a few suitors of comfortable circumstances, her strong ambition to strike out on her own in the "big city" and carve out a career for herself. [39]

The declaration by the appellant's wife that Josephine was a flirt, openly attempting to seduce her husband, [40] cannot be believed. If true, she would certainly never have allowed Josephine to stay as long as she did in her home. The attempt by Marlyn Jacobo to corroborate Rouben's claim that he had deposited his service revolver with her -- and consequently could not have used that weapon to intimidate Josephine -- was negated by her admission that she had accepted the deposit of the firearm and issued a receipt therefor even though she (and Rouben) already knew that the purported reason therefor, Rouben's emergency leave, no longer existed, having been cancelled by a "red alert" announcement. [41]

In fine, the record discloses no reason whatever to disturb the factual findings of the Trial Court. It was in a better position to resolve the issues of fact on the basis of direct and personal observation of the deportment of the witnesses and their manner of testifying; and in this case, it does not appear that it has overlooked any circumstance of substance or value that might affect the result of the case. The Trial Court's findings will thus be sustained. [42]

The proofs establish the commission of two (2) crimes of rape by the appellant. Each act of forcible sexual intercourse constitutes one distinct offense of rape. [43] This notwithstanding, it is not legally possible to convict the offender of two (2) rapes albeit perpetrated on the same occasion, where the information charges only one and otherwise contains no averments from which a conclusion that more than one such offense has been committed

may plainly and patently be drawn.[44] In 1980, in a case where the records disclosed "that the information charges only one crime of rape ** (but) the evidence presented by the prosecution established two other separate sexual intercourse on two subsequent dates," this Court ruled that -

"An accused cannot be convicted of an offense not charged or included in the information because the Constitution guarantees that: 'In all criminal prosecutions, the accused ** shall enjoy the right ** to be informed of the nature and cause of the accusation against him **' (Section 19, Art. IV, Bill of rights, 1973 Constitution). Likewise, ** it matters not how conclusive and convincing the evidence of guilt may be, an accused person cannot be convicted in the courts of these Islands of any offense, unless it is charged in the complaint or information on which he is tried, or necessarily included therein. He has a right to be informed as to the nature of the offense with which he is charged before he is put on trial **' (Matilde, Jr. vs. Jabson, 68 SCRA 456, 461 [1957], citing U.S. vs. Campo, 23 Phil. 396 [1912]). Consequently, the appellant herein may only be convicted of one crime of rape."

WHEREFORE, the judgment of the Trial Court rendered on November 20, 1985, being in accord with the facts and the law, is affirmed in all respects.

Teehankee, C.J., Cruz, Paras,[*] and Gancayco, JJ., concur.

[1] TSN, July 18, 1983, pp. 7-9

[2] TSN, July 18, 1983, pp. 10-11

[3] TSN, Aug. 22, 1984, pp. 35-36

[4] Id., pp. 44-46; TSN, Oct. 3, 1983, pp. 79-81; TSN, July 28, 1983, pp. 44-46

[5] TSN, July 18, 1983, p. 46

[6] Id., pp. 47-48

[7] Trial Court Record, p. 183

[8] Docketed as Crim. Case No. 2290; SEE Original Record, p. 3; complaint, Exh. B; TSN, July 18, 1983, pp. 4-6; Information, Original Record, pp. 1-2

[9] Lower Court Record., p. 251

[10] TSN, Aug. 22, 1984, p. 76

[11] TSN, July 18, 1983, pp. 19-23

[12] Id., p. 24

[13] Id., pp. 31-37

[14] Id., pp. 39-44; TSN, Oct. 3, 1983, pp. 57-64

[15] TSN, July 18, 1983, pp. 44-46; TSN, Oct. 3, 1983, pp. 79-81

[16] TSN, July 18, 1983, p. 46

[17] SEE footnotes 5 and 6, page 2, supra

[18] Exh. C, Trial Court Record, p. 184

- [19] TSN, May 24, 1984, pp. 8-9
- [20] TSN Nov. 19, 1982, pp. 17-18
- [21] Id., pp. 8-17, 23
- [22] Id., pp. 19-23
- [23] TSN, July 9, 1984, pp. 5-9, 13-14
- [24] Id., pp. 17-18
- [25] TSN, Aug. 22, 1984, pp. 58-59
- [26] Id., pp. 6-9; Exhs. 1 and 1-A, original Rec., p. 222
- [27] Id., pp. 63-64
- [28] Id., p. 65
- [29] Id., p. 67
- [30] Id., p. 76
- [31] Id., pp. 79-81, 83-85
- [32] TSN, Nov. 27, 1984 (pm), pp. 8-10
- [33] Id., p. 18
- [34] Id., p. 20
- [35] TSN, Nov. 27, 1984 (a.m.), p. 4
- [36] Id., pp. 12-13
- [37] Decision of Court a quo, pp. 10-11
- [38] Peo. v. Cruz, Sr., G.R. No. 71462, June 30, 1987, citing Peo. v. Budol, G.R. NO. L--48010, July 31, 1986
- [39] TSN, July 18, 1983, pp. 48-49
- [40] -- + TSN, Oct. 3, 1983, pp. 14-15
- [41] SEE footnote 1, p. 7, supra
- [42] SEE footnote 5, p. 7, supra
- [43] Peo. v. Cruz, Sr., G.R. No. 71462., June 30, 1987, supra; Peo. v. Ibal, G.R. No. 66010-12, July 13, 1986, supra; Peo. v. Alcid, 135 SCRA 280; Peo. v. Cielo, 133 SCRA 117; Peo. v. Centeno, 130 SCRA 198
- [44] Peo. v. Baao, 142 SCRA 476 (1986); Peo. v. Alcid, 135 SCRA 280 (1985)
- [45] SEE, e.g., Peo. v. Bohos, 98 SCRA 353 (1980) where the complaint for forcible abduction with rape alleged that the several accused, "*** conspiring together ** and with lewd designs ** take and carry away the undersigned by force and violence or intimidation in a cargo truck ** dragged her to a certain house ** (and there) alternately and successively had sexual intercourse with her against her will ** ", and this Court convicted the appellants of one (1) felony of "forcible abduction with rape and sixteen (16) separate crimes of rape" and imposed seventeen (17) death penalties. Aquino, J., dissented, holding that since the complaint failed to

specifically alleged the number of rapes, "the accused should be convicted only of forcible abduction with rape which is the offense charged in the information and which should be considered a continuous crime, embracing or absorbing the other sixteen alleged rapes which were not specifically alleged in the complaint (and therefore) only one death sentence should be imposed." This view, that each appellant "should be punished only for the rapes he himself enjoyed, without being responsible for the other rapes he helped his companions commit," was declared by Barredo, J., to be "revolting to the conscience" and "extremely over liberal in the application of our criminal law," and that if any procedural flaw existed in the case, it was "the failure of the defense to ask for a bill of particulars and to object to the presentation of evidence proving more than one rape."

In *Peo. v. Daing*, 133 SCRA 448 (1984), the information charged the two (2) accused with having conspired and confederated together, and having assisted and cooperated with each other, in raping the offended party; they were convicted of two (2) separate rapes.

[*] Designated a Special Member of the First Division

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