

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERLY DALINOG, DEFENDANT-APPELLANT.

G.R. NO. 74952. March 12, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Rape is a detestable crime. But rape of a visibly pregnant woman is even more condemnable as it borders on perversion. It deserves nothing less than the ultimate possible penalty under the law. Thus, the Regional Trial Court of Masbate, Branch XLIV, imposed on Berly Dalinog the penalty of reclusion perpetua for the rape of Cerlina Armenton who was then heavy with child, as follows:

"WHEREFORE, this court is convinced beyond reasonable doubt that the accused is guilty of the crime of rape and in the absence of any mitigating circumstance, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA to be served in the National Penitentiary and to pay the costs. The accused is however given the benefit of four-fifths (4/5) of his detention from the time of his arrest.

"IT IS SO ORDERED."[1]

On April 15, 1982, Cerlina Armenton filed a criminal complaint dated April 5, 1982 with the Office of the Provincial Fiscal of Masbate, docketed as I.S. No. 82-2507 charging accused-appellant Berly Dalinog with the crime of Rape, thus:

"The undersigned CERLINA ARMENTON, complainant in the above-named entitled case, after having been duly sworn to in accordance with law, accuses BERLY DALINOG of the crime of RAPE committed as follows:

"That on or about the 27th day of February, 1982, at about 7:00 o'clock in the morning more or less, in the sitio Dolao, Ilaya, Balud, Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent did then and there wilfully, unlawfully and feloniously, and by means of force and intimidation, commence the commission of Rape directly by overt act to wit:

"While she was getting water from a well, without her knowledge and consent Berly Dalinog immediately held her tightly on her neck with both hands squeezing firmly making her unable to flee and then and there forced her to lay (sic) down, undressed and took off her panty, laid on top of her embraced, kissed and touched her breast and private parts with the intent of having carnal knowledge of her. He accomplished his purpose by holding his penis and forcing it to the vagina of said victim. Medical Certificate is hereto attached issued by Artemio O. Capellana, M.D., Municipal Health Officer, Masbate, Masbate.

"Contrary to law."[2]

After the preliminary investigation of the aforesaid criminal complaint, an information dated April 29, 1982 was filed by the Office of the Provincial Fiscal of Masbate, which reads:

"That on or about February 27, 1982, in the morning thereof, at Sitio Dolao, Barangay Ilaya, Municipality of

Balud, Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused with deliberate intent, and by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have a (sic) carnal knowledge of one Cerlina Armenton, a pregnant woman, against the latter's will.

"Contrary to law."[3]

The records show that the subpoena issued against the accused could not be served upon him. He was to testify later that for the amount of P50.00 and a chicken, he was able to convince the serving officer to report that he (accused) could not be served with the subpoena. Having evaded such service, the accused thereafter disappeared and was arrested only in the month of January, 1984 on the basis of a warrant of arrest dated July 28, 1982.[4] He pleaded not guilty upon being arraigned on February 24, 1984 and trial on the merits commenced.

As in most rape cases, there was no eyewitness to the Commission of the crime. The principal witness of the prosecution is the victim herself, Cerlina Armenton, 23 years old, married and in the ninth month of pregnancy with her second child, during the incident in question. She declared the same facts stated in the complaint that at around 7:00 o'clock in the morning of February 27, 1982, she went to a well a hundred meters downhill from her house in Sitio Dilao (Dolao), Ilaya, Balud, Masbate to fetch water. The well was in a place surrounded by cogon grass. While she was fetching water, Berly Dalinog, a second cousin of her mother, grabbed her, took off her panty and pushed her to the ground. Instantly, she shouted but he was able to insert his penis into her vagina. Cerlina shouted some more. She struggled to free herself from him but Dalinog succeeded in having his way. After he had consummated the sexual act, Dalinog stood up and warned her not to inform her husband and her relatives about what had happened otherwise he would kill them all.[5] Then he hurriedly went away.

Her testimony was corroborated by Linda Magno, a sister of Cerlina's mother and a second cousin of Dalinog. She allegedly heard Cerlina's shouts for help while she was gathering gabi ("hapyay") stems for her pigs, some 50 to 150 meters from the well.[6] She immediately recognized Cerlina's voice because Cerlina's husband had told her that Cerlina was by the well.[7] She then ran towards the well. About twenty meters therefrom, Linda saw Dalinog standing near Cerlina who was seated on the ground crying.

As Dalinog walked hurriedly away from Cerlina, Linda approached her. Linda noticed that Cerlina's dress was torn and that she had contusions on her legs and arms "because she was dragged on (the) stony ground".[8] She also noticed that Cerlina was trembling. When she asked her what happened, Cerlina answered that she had been raped.[9] Because Cerlina complained that she could not stand up, Linda helped her and took her home.

In the afternoon of the same day, Linda accompanied Cerlina and her parents to the barangay headquarters to report the incident.[10] This fact was confirmed by the barangay captain, Lydia Beruya, who, not being able to handle the case, advised Cerlina and her relatives to report the matter to the police authorities in the poblacion of Balud.[11]

The following day, February 28, 1982, at around ten o'clock in the morning, Cerlina reported Dalinog's sexual assault on her to the Balud police. She was accompanied by Linda and her parents. Cerlina told police investigator Harry Estrella that while she was fetching water from the well for her bath, Dalinog held her waist with both arms and grappled with her until she dropped to the ground, after which he succeeded in having sexual intercourse with her.[12] Estrella testified on these facts as told to him by Cerlina Armenton and Linda Magno.

Estrella took Cerlina's statement in the Visayan dialect.[13] As translated, she stated thus:

"Q - Why are you here in the Office of the Station Commander of Balud, Masbate?

"A - I will file a case.

"Q - Against whom will you file a case?

"A - Berly Dalinog.

"Q - What are the reasons why you will file a case against Berly Dalinog?

"A - Because he raped me.

"Q - Do you still have some more to say on how Berly Dalinog molested you and what other acts he did to you?

"A - While I was on the well fetching water, Berly Dalinog arrived immediately, he approached me and molested me, I shouted for help but he choked me and he let me lie down on the ground and he took off my panty and he immediately inserted his penis to my vagina, after having sexual intercourse with me he immediately stood up and told me that if I tell this incident to my husband and to my parents he will kill us all (sic).

"Q - When Berly Dalinog walked away what is your situation?

"A - I sit (sic) down and keep (sic) on crying, afterwards Linda Magno arrived and she asked me, "What happened to you?", and I told her that I was molested and sexually intercoursed (sic) by Berly Dalinog, and then I was brought by Linda Magno to our house.

"Q - In what place did this incident happened, what date, time and year?

"A - In (sic) our well in sitio Dolao, Ilaya, Balud, Masbate on the 27th day of February, 1982 at about 7:00 in the morning more or less.

xxx xxx xxx."[14]

Cerlina signed the statement in the presence of Estrella. Then he took the statement of Linda, also in the Visayan dialect who narrated thus:

"Q -

What are the reasons that you will (sic) be a witness of Cerlina Armenton?

"A -

That on February 27, 1982 at about 7:00 in the morning more or less, I was at the lowland of the house of Cerlina Armenton gathering feeds for the pig, the stems of "hapay", at that moment I heard someone shouting for help which came from the well and immediately I went there and while I was approaching near the well with a distance about 20 meters I saw Berly Dalinog standing then walked going downhill, and Cerlina Armenton was sitting on the ground and her dress was torn and she kept on crying. (sic) When Berly was far already I approached Cerlina and asked her, "What's the matter with you?" and the answer of Cerlina Armenton was that she was raped by Berly Dalinog and that he succeeded.

"Q -

What did you do after asking Cerlina what's the matter?

"A -

Cerlina Armenton told me that she cannot stand up and because she was pregnant and about to deliver a baby I helped her going to their house.

"Q -

Upon reaching their house who were the persons present there?

"A -

Their small child, and her husband was in Balud delivering tuba.

"Q -

What is the distance from the well to the house of Cerlina Armenton?

"A -

50 meters more or less.

"Q -

Since when you have (sic) known Berly Dalinog?

"A -

Since I grew up and he is my second cousin.

xxx xxx xxx."[15]

As to injuries suffered, Cerlina's testimony was further corroborated by the findings of Dr. Artemio G. Capellan who examined her on March 2, 1982 at the Masbate Main Health Center at Masbate, Masbate. The doctor found an abrasion with moderate hematoma on Cerlina's right knee, a contusion with a circular hematoma on the left and lateral portion of the neck and a circular abrasion with irregular edges on the interior portion of the right mammary gland, all possibly caused by a blunt instrument. The genital examination revealed two old and healed lacerations on the hymen at the 3:00 and 6:00 o'clock positions and a microscopic study showed the presence of non-motile spermatozoa in the vagina.[16]

According to Dr. Capellan, Cerlina not only complained of an "on and off" abdominal pain but she also repeatedly told him that she was raped.[17] Three days after said medical examination, Cerlina gave birth.[18]

The defense admitted the fact that Dalinog and Cerlina had sexual intercourse that morning of February 27, 1982, but justified the commission of the act by alleging that Dalinog and Cerlina were lovers.

The defense presented Teresita Pancho who testified that she once saw Cerlina going down from the house of Dalinog.[19] The following week, when Teresita was passing by Dalinog's house, she saw through the window Dalinog and Cerlina embracing each other.[20]

Another defense witness, Gomercindo Degala, Jr., 22 years old, testified that he suspected that Dalinog and Cerlina had an amorous relationship because in 1981 he saw Cerlina going to the house of Dalinog several times. On November 4, 1981, he went to Dalinog's place to borrow a hammer. He called Dalinog but as no one answered him, he went near the house. Having noticed that someone was inside the house, he peeped through the bamboo wall. He saw Dalinog and Cerlina having "an actual sexual intercourse".[21]

Dalinog, who was 50 years old when he testified, stated that in the morning of February 27, 1982, he was at home in Dilao, Ilaya, Balud, Masbate, when Cerlina arrived. Because she was his "woman", they had sexual intercourse to satisfy their "earthly living". As Cerlina later suggested that they should take a bath, they went to his well five meters from his house. Inside the improvised bathroom with coconut leaves as walls, Cerlina took off her clothes and he bathed her by rubbing her body and pouring water on her.

It was at that moment when Erlinda Magno, Cerlina's aunt, arrived. She said, "Oh, what is this, you son of a whore, what are you doing here, Shirlina (Cerlina)?" Cerlina just kept quiet as Erlinda left them. He told Cerlina that Erlinda might tell her husband about what he saw but Cerlina assured him not to worry. Then they parted ways -- he went home and Cerlina returned to her own house.[22]

Dalinog claimed that Cerlina became his "woman" after she and her husband Ernesto borrowed P200 from him sometime in 1980. It was then that he noticed that Cerlina was flirting with him. After the couple had paid him with corn, in 1981 they came back to borrow P150. But in April, 1981, Cerlina came to him alone to borrow rice. He then told her that he would give her rice and money if she would consent to do something with only "heaven and earth" as witnesses. Thus, they had sexual intercourse, and, after that, he gave Cerlina rice, fish, squid and P50. The following Sunday, he saw smoke emanating from his kitchen. He thought his child had arrived but instead, he saw Cerlina cooking. So, he went inside the house and brought Cerlina to his bedroom. His relationship with Cerlina lasted for ten months.[23]

The trial court* rejected Dalinog's story and rendered the aforementioned verdict of conviction. Dalinog interposed this appeal seeking acquittal on the ground that the lower court gravely erred in giving weight and credence to the prosecution evidence and in totally disregarding the defense evidence. This contention is unmeritorious.

Appellant interposes as a ground for his acquittal the fact that Cerlina "waited three (3) days" before she consulted a doctor for physical examination.[24] This contention deserves scant consideration.

Appellant must have overlooked the fact that Balud had no municipal health officer.[25] Cerlina had to seek the help of Mayor Arguelles of Balud just so a medical examination could be conducted on her by the government physician in Masbate, Masbate. Moreover, delay in the physical examination of a rape victim is not fatal to the prosecution.[26] In fact, in rape cases, the medical examination of the victim or the presentation of a medical certificate is not essential to prove the commission of the rape as the testimony of the victim alone, if credible, is sufficient to convict the accused of the crime.[27]

We also find unmeritorious appellant's contention that Cerlina "failed to show that she indeed ferociously put up a fight or struggle in defense of her honor".[28] The defense should be reminded that Cerlina was not an ordinary robust 20-year old woman. She was in the late stage of pregnancy. That she failed to fight back as fiercely as the defense would have her done is explained by her delicate condition. Besides thinking of her own safety, Cerlina had to consider the welfare of her unborn child. Under the circumstances, she did what could be expected of her -- she shouted. But actually, she did more than that. The medical examination reveals body marks to prove that despite her condition, Cerlina tried to foil appellant's malevolent advances.

The defense likewise expresses doubts on "the good faith of the complainant in filing the rape charge" because of the "aura of improbability as to the manner the alleged rape was committed".[29] On this contention, the defense quotes the following testimony of Dr. Capellan:

"Q -

Now, you mentioned of abrasion with moderate hematoma affecting the right knee hit by a blunt instrument, will you please point doctor in your body where this hematoma is situated?

"A -

Here (witness indicating his right knee).

"Q -

Now, is it possible doctor, that this injury on the right knee of the complainant could have been incurred while the complainant was having sexual intercourse with somebody or the accused in this case and the complainant was on top of the man?

"A -

Possible, sir.

"Q -

It is also possible that the knee would be touching the ground or any hard object?

"A -

Possible, sir.

"Q -

And most likely doctor if a woman, if a man has to make sexual intercourse with a woman who is pregnant, the best position that a woman should do would be to lie on top of a man so that her abdomen, the baby inside would not be affected or depressed?

"A -

Possible, sir.

"Q -

Now, considering a that woman is pregnant doctor there is the possibility that she must be on top of a man?

"A -

Possible sir.

"Q -

And if it is possible that a woman is on top of a man, no rape can be committed?

"A -

Possible, sir.

xxx xxx xxx

"Q -

Is it possible doctor that the abrasion with hematoma could have been caused by bare hands?

"A -

Possible, sir.

"Q -

You told us that this could have been inflicted after the sexual intercourse?

"A -

It is possible, it could be before or after the sexual intercourse.

"Q -

But it is possible doctor that since you told us that this abrasion might have been inflicted after the sexual intercourse?

"A -

Possible, sir.

"Q -

That this might have been inflicted by the husband of the woman upon knowing of what happened to his wife?

"A -

Possible, sir.

"Q -

Which is very ordinary doctor because a man upon knowing that his wife had sexual intercourse with anybody would certainly hold her by the neck?

"A -

Yes sir."[30]

By this testimony, the appellant attempts to convince the Court that he could not have committed the rape because the position of appellant and Cerlina while performing the sexual act, i.e., she was on top of appellant because of

her bulging stomach, manifested voluntariness on Cerlina's part. This defense theory, unfortunately, is not backed up by hard facts. The quoted testimony clearly shows that the defense counsel was merely feeding the witness with possibilities and the witness was likewise answering his interrogations in terms of possibilities. Nevertheless, should this line of defense be pursued, extant on the record is the following portion of the same witness' testimony:

"Q -

Now, is it not possible doctor that when you are asked by counsel for the defense that the best position for a pregnant woman to have sexual intercourse is that she would have to be on top of a man, is that correct?

"A -

Medically, that position is (sic) as a matter of fact that is the complain of the woman, the on and off abdominal pain because of the position, but the best position for a pregnant woman for a sexual intercourse is what we call in the local dialect "dinanggit" or the "scissor type". In that case where the man is on top of the pregnant woman (it) would cause that on and off abdominal pain."[31]

Hence, in the absence of proof we cannot give any weight to the defense's assertion that the sexual act was consummated in the manner that the defense wants to portray. It should be noted that the appellant himself who admitted having carnal knowledge of Cerlina in his colorful testimony, did not reveal how he performed the act. It was Cerlina who provided the Court with the description of the manner by which she was raped.

Appellant's presentation of possibilities as part of his defense betrays the paucity of evidence to buttress his claim of innocence. His revelations in court further served to pin himself down rather than exonerate him. A self-confessed lothario, Dalinog declared that Cerlina was the seventh of his women and that, until Cerlina filed the rape case against him, no one of them had a cause to complain because he "maintained" them.[32]

Dalinog further testified that it was two months after the case had been filed and when a subpoena was served on him that he learned that Cerlina had accused him of rape. He claimed under oath that he told the police officer serving the subpoena that he was in a hurry to bring the allowance of his child in Iloilo so the police officer should feign that he had not met him in consideration of a hen and P50.[33]

Although there is proof that the subpoena was not served because Dalinog "could not be found" in Balud and that he was at large,[34] said testimony of Dalinog, if true, only proves his evasion from the processes of the law. That fact, coupled with his disappearance in Balud for more than a year, gives no other inference but that he fled to avoid his prosecution. Unfortunately for him, under our jurisprudence, the flight of an accused discloses a guilty conscience.[35]

As correctly observed by the trial court, the defense version is bereft of reason and contrary to the ordinary course of human events. We take note that no woman in her proper senses would agree to a tryst in a place where not only other people could easily observe but which is also within the reach of her husband. As can be gleaned from the testimony of defense witness Degala, Dalinog's house is not exactly ideal for an illicit interlude. Cerlina must really be morally depraved to allow herself to be seen in the arms of her lover who also happens to be her uncle, in the latter's house in a very rural community where everybody knows everyone.

Indeed, Cerlina's actuations as portrayed by Dalinog, seem to be contrary to the traits of a Filipino wife in the barrios. If Dalinog really had an adulterous relationship with Cerlina, she could have kept silent and refrained from filing the case in court as it would result in the undue exposure and publication of the relationship.[36] But, notwithstanding the reluctance of her husband in filing the rape case as he thought it would entail expenses,[37]

Cerlina, with the support of her parents and relatives, went through the legal proceedings leading to the conviction of Dalinog. In fact, according to policeman Estrella, before Dalinog's arrest, Cerlina frequented the police station tearfully complaining all the time why Dalinog had not yet been arrested.[38]

On the other hand, the truth is reflected in the consistent claim of Cerlina that she was raped. From the time Linda Magno found her crying immediately after Dalinog raped her until she testified in court, Cerlina openly declared that she was raped. This fact further strengthens her case against Dalinog in the face of ample jurisprudence holding that when a woman testifies that she has been raped, she says in effect all that is necessary to show that rape was committed provided her testimony is clear and free from contradiction and her sincerity and candor, free from suspicion.[39]

Finally this case furnishes another occasion to reiterate the fundamental rule that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.[40]

A careful examination of the records yields no cogent reason to disturb the findings and conclusions of the trial court.

We therefore find that the trial court correctly imposed the penalty of reclusion perpetua on Berly Dalinog for having committed rape under Article 335(1) of the Revised Penal Code, it appearing that no mitigating circumstances have been proven to lessen the penalty. It, however, failed to provide for the corresponding civil indemnity.

WHEREFORE, the decision of the lower court is hereby **AFFIRMED**. Accused-appellant is further ordered to indemnify the victim Cerlina Armenton in the amount of P30,000. Costs against accused-appellant.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Decision, Crim. Case No. 3776; Appendix "A", p. 8; Brief for the Accused-Appellant, Rollo, p. 54.

[2] Appellee's Brief, pp. 1-2; Rollo, p. 63.

[3] Appellee's Brief, p. 3; Rollo, p. 63.

[4] Decision, Crim. Case No. 3776, p. 7.

[5] TSN, January 17, 1984, pp. 2-6.

[6] TSN, July 18, 1984, p. 3.

[7] TSN, *supra*, p. 15.

[8] TSN, *supra*, p. 4.

[9] TSN, *supra*, p. 19.

[10] TSN, *supra*, p. 5.

[11] TSN, December 3, 1984, p. 3.

[12] TSN, September 27, 1984, p. 2.

[13] Exh. A.

[14] Exh. C; Records, p. 40.

[15] Exh. E; Record, p. 39.

[16] Exh. F.

[17] TSN, August 17, 1984, p. 10.

[18] TSN, July 17, 1984, p. 5.

[19] TSN, January 28, 1985, p. 3.

[20] TSN, *supra*, p. 4.

[21] TSN, January 30, 1985, pp. 2-3.

[22] TSN, January 29, 1986, pp. 2-4.

[23] TSN, *supra*, pp. 5-7.

* Judge Manuel C. Genova penned the decision. Until he took over the case when the last defense witness, appellant himself, testified, Judge Ludovico C. Lopez conducted the trial.

[24] Brief, p. 7.

[25] TSN, August 17, 1984, p. 5.

[26] *People v. Alqueza*, 51 Phil. 817 (1928).

[27] *People v. Sonico*, G.R. No. 70308, December 14, 1987, 156 SCRA 419, 424 citing *People v. Pielago*, L-42256, December 19, 1985, 140 SCRA 418, 422 and *People v. Aragona*, L-43752, September 19, 1985, 138 SCRA 569, 577-578.

[28] Brief, p. 8.

[29] Brief, p. 8.

[30] TSN, August 17, 1984, pp. 11 & 12-a.

[31] TSN, *supra*, p. 17.

[32] TSN, January 29, 1986, pp. 12 & 14.

[33] TSN, *supra*, p. 11.

[34] Exh. H.

[35] *People v. Anquillano*, G.R. No. 72318, April 30, 1987, 149 SCRA 442, 446.

[36] *People v. Partulan*, G.R. No. 72594, December 14, 1987, 156 SCRA 489, 497 (1987).

[37] TSN, July 17, 1984, pp. 29-30.

[38] TSN, September 27, 1984, p. 9.

[39] *People v. Alfonso*, G.R. No. 72573, August 31, 1987 citing *People v. Ervas*, G.R. No. 51549-51, May 11, 1984, 129 SCRA 200; *People v. Royeras*, L-31885, April 29, 1974, 56 SCRA 666.

[40] People v. Pimentel, L-47915, January 7, 1987, 147 SCRA 25; People v. Anuncio, L-66917-18, September 24, 1986, 144 SCRA 384; People v. Patag, L-69620, September 24, 1986, 144 SCRA 429.

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