

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SIEGFRED FAJARDO, ACCUSED-APPELLANT.*G.R. No. 75029. June 30, 1987*

Ponente: GUTIERREZ, JR., J.

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This is an appeal from the decision of the Regional Trial Court, Branch 19, at Malolos, Bulacan, which found accused Siegfred Fajardo guilty beyond reasonable doubt of the crime of rape and sentenced him to the penalty of reclusion perpetua and ordered him to indemnify the offended party in the amount of P50,000.00 as moral damages.

The evidence adduced by the prosecution which formed the basis of the appealed decision is summarized by the trial court as follows:

"As alleged by the prosecution, at around 7:00 p.m., of August 19, 1982 complainant while walking alone near her home in Pulong Yantok, Angat, Bulacan was accosted by the accused who held her arm saying he loves her, whereupon she retorted 'Are you crazy'. She tried to extricate from his hold but the accused boxed her in the stomach where she fell to the ground unconscious. When she regained consciousness, she was already naked while the accused was standing zippering his shorts, after which he ran away. She felt weary. Her whole body was painful and blood was oozing from her private part which was likewise very painful. There were two buttons ripped from her olive green CAT uniform which is now soiled (Exh. A); her orange T-shirt (Exh. B) was beside her, the front portion of her colored blue pants (Exh. C) was torn, the skirt was soiled (Exh. D) and her yellow shorts which doubled as panty (Exhs. E, E-1) was bloodied. She dressed and walked to the house of her aunt Fely Ocampo and reported that she was raped. Her aunt requested somebody to fetch complainant's father. The father arrived and after investigating complainant immediately reported the matter to the barangay captain, then with complainant, reported the same to the police in Angat, Bulacan where she gave a written statement (Exh. F). That same night, they proceeded to Dr. Renato V. Cruz in Angat but she was medically examined only the following day. According to Dr. Cruz's findings (Exhs. H & H-1) the hymenal part admits one (1) to two (2) fingers with slight difficulty. Presence of old lacerations (more than 30 days old) were found at 3:00, 7:00 and 10:00 o'clock of the hymen. Also found was a 1/4 inch diameter abrasion, at upper outer quadrant of the left breast, Dr. Cruz advised complainant to have a vaginal smear to determine the presence of semen. He did not discount the possibility of rape since according to him the hymen is elastic but is sure that there were no new lacerations. The father later asked for a copy of Exh. H but was not given and doubting the doctor's findings alleging the latter's relationship with the accused, brought his daughter to the NBI and was examined at 11:30 a.m., of August 12, 1982 (Exh. I). Dr. Nieto Salvador found the hymen superficially lacerated 7:00 o'clock but healing, edges are slightly edematous and with fibrin formation; deep laceration at 3:00 o'clock and 9:00 o'clock, edges edematous. No evident sign of extragenital physical injuries on the body and the hymenal lacerations were healing, the NBI medico-legal concluded. Amplifying, Dr. Salvador said that the injuries were inflicted two or three days before examination as fibrin formation which indicate healing was present. As a result of the rape, complainant suffered sleepless nights, wounded feelings and besmirched reputation." (pp. 1-3, Decision of Trial Court)

The accused-appellant states that complainant Ma. Charity Lazaro was his girl friend and that he never raped her.

The facts from the appellant's viewpoint are rather sketchy. He alleges in his brief:

"The private complainant Ma. Charity Lazaro, who was then 17 years old on August 9, 1986 was walking towards home at about 5:00 in the afternoon. She was met by the accused/appellant who was then a boyfriend of said private complainant. The accused/appellant accompanied her to the house of the private complainant. They were talking about their relationship while walking along the street and before they parted they kissed each other at a place near the gate. The accused/appellant after bading (sic) goodbye went home.

"Later in the evening Marcelino Agustin, uncle of the private complainant went to the house of the accused/appellant and told the accused's father that the accused embraced the private complainant. He, however, advised the father of the accused not to see the barangay captain as he might meet there the father of the complainant.

"On August 31, 1982, Ma. Charity Lazaro accompanied by her father filed a complaint for Rape against the accused. Said complainant and his father Leopoldo Lazaro gave sworn statements and after preliminary examination conducted before the Municipal Trial Court of Angat, the same was forwarded to the Office of the Provincial Fiscal of Bulacan." (p. 39, Rollo)

The appellant states that the lower court erred:

A. IN FINDING THE INCONSISTENT TESTIMONIES OF THE PRIVATE COMPLAINANT IN ESTABLISHING THE CRIME OF RAPE.

B. IN CONSTRUING THE GENITAL FINDINGS ON THE SUBJECT CONSISTENT WITH RAPE.

C. IN OVERRULING THE MEDICAL AND GENITAL FINDINGS OF A PRIVATE PRACTITIONER.

D. IN NOT BELIEVING THE THEORY OF THE ACCUSED/APPELLANT.

E. IN FINDING THE ACCUSED AS THE PERPETRATOR OF THE ALLEGED CRIME. (p. 2 - Appellant's Brief)

The alleged inconsistencies mentioned by the appellant in his first assignment of error are so flimsy that they can be dismissed without much discussion.

The appellant cites the testimony of Ma. Charity Lazaro on August 18, 1983 where she was asked if any conversation transpired between her and the accused when the latter held her arm. Her answer was, "None sir." (p. 6, t.s.n., August 18, 1983). On September 22, 1983, the testimony of the same witness was:

"Atty. Mangahas:

"Q: What was the first thing did the accused do so that you came to realize that he was accosting you?

"A: He held me in my arm, sir.

"Q: What arm, left or right?

"A: Right arm, sir.

"Q: Without any conversation between you and him?

"A: There was a conversation, sir.

"Q: Please inform this Honorable Court what was that conversation?

"A: He said that he loves me very much but I told him - what are you crazy? (TSN, September 22, 1983, pp. 15-16).

The conversation supposed to be inconsistent with the earlier answer is hardly any conversation at all.

The second inconsistency refers to time. On August 18, 1983, the complainant testified that she was raped at 7:00 P.M., on August 7, 1982. During her cross-examination on September 22, 1983, she testified that she reached the scene of the crime at 6:00 P.M., of that date.

The absence of precision in stating the time of the crime is understandable. The testimony of the complainant as to when the crime was committed is based on an estimate of time and not reference to a timepiece.

The appellant also questions the complainant's statement that Siegfred Fajardo was never her suitor by pointing out that when he accosted her, he stated that he loves her. Fajardo's "loving" the complainant does not necessarily mean he was her suitor.

The discrepancy between the findings of the private physician and the Medico-Legal Officer of the National Bureau of Investigation is explained by the trial court in its decision as follows:

"The court is thus confronted with two sets of conflicting medical certificates, one issued by Dr. Cruz and the other issued by Dr. Salvador, medico-legal (sic) of the NBI. The medical certificate issued by the former dated August 15, 1982 (Exh. H; Exh. 2) found old healed lacerations (more than 30 days old) while the latter's medical certificate dated August 12, 1982 (Exh. I) concluded that the 3 lacerations two of them deep were fresh and healing (around two or three days old) exactly coincided with the alleged rape of August 9, 1982.

"Despite his findings however, Dr. Cruz did not discount the possibility of rape and suggested a vaginal smear. On the other hand NBI medico-legal was emphatic that complainant had sexual intercourse and the lacerations were the result of such intercourse (p. 19, TSN., April 12, 1984). After carefully assessing the evidence, the court is of the opinion that greater weight should be given to Exh. I. The medical examination conducted by the NBI which is a police agency under the Department of Justice tasked by the government to conduct or perform medico-legal work should be afforded full faith and credit because not only could Dr. Salvador be categorized as a disinterested witness, he also enjoys the presumption of regularity in the performance of official duty. On the other hand, Dr. Cruz being a private medical practitioner in Angat, Bulacan, can not avail of this presumption. His private clinic is well known there and serves the general public, his relatives, friends, and acquaintances.

"The testimony of complainant's foster father that Dr. - Cruz is related to the accused cannot just be dismissed casually and it becomes credible when it remained unrebutted. He is therefore not a disinterested witness. Precisely, because of this and Dr. Cruz's refusal to furnish a copy of the medical certificate, that Lazaro (complainant's foster father) has deemed it wise to seek the help of the NBI." (Decision of trial court, pp. 3-4).

We see no error in the decision of the trial court to give greater weight to the medical findings of the NBI physician. Not only is he a medico-legal expert whose duty is to look into medico-legal cases but he is a completely disinterested witness.

We agree with the Solicitor General that the question of credibility should be resolved against the appellant. He argues:

"Appellant's testimony that complainant's uncle, Marcelino Agustin, followed him home after having seen appellant embrace complainant near the gate of the house, and reported the matter to appellant's father who suggested that they see the barangay captain about the incident but later decided not to, is utterly incredible. Why should a simple embrace between sweethearts be of such serious concern to the boy's father? Why did the defense not present appellant's father and complainant's uncle to corroborate his testimony? And if

complainant and appellant were really sweethearts and were getting along very well, why would she accuse him of such a serious and heinous crime? All these cast doubts on appellant's version. On the other hand, it is inconceivable that a barrio lass could relate such a woeful story replete with details if the same did not actually happen. There was absolutely no reason for her to falsely accuse appellant. Moreover, her alleged inconsistency, that of declaring that no conversation transpired between her and appellant, and then later on admitting that he professed his love to her which she spurned; as well as the alleged disparity of her testimony that she was raped at 7:00 p.m., and her statement on cross-examination that she reached the place of incident about 7:00 (sic) p.m., are trivial and minor so that they do not impair the complainant's credibility.

"Complainant's torn and bloody pants, soiled shirt, abrasion in her breast and three fresh lacerations on her hymen are mute but eloquent proof of her dishonor. All appellant could say in this regard was that the torn and bloody clothings could have been intentionally done before their presentation in court." (pp. 6-7, Appellee's brief).

The usual indemnity awarded in rape cases is P20,000.00. The records do not indicate any special reasons to warrant raising the indemnity to P50,000.00 as ordered by the trial court.

WHEREFORE, the judgment of the court a quo is hereby **AFFIRMED** except for the P50,000.00 indemnity which is **REDUCED** to TWENTY THOUSAND PESOS (P20,000.00).

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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