

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO PARTULAN, DEFENDANT-APPELLANT.

G.R. No. 75294. December 14, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In an information that was filed in the Court of First Instance of Leyte and docketed therein as Criminal Case No. 5030, Rogelio Partulan was charged with the crime of rape for wilfully, unlawfully and feloniously having carnal knowledge, by means of force, violence and intimidation, of Nonita Dasigan, against her will and consent.

On April 16, 1986, the said Court rendered a decision convicting the accused as charged with the following dispositive portion:

"WHEREFORE, the prosecution having established the guilt of the accused beyond reasonable doubt, the court finds the accused Rogelio Partulan GUILTY of rape and there being no modifying circumstances to consider, the use of a deadly weapon not having been established to the satisfaction of the court (sic), he is hereby sentenced to reclusion perpetua, to indemnify the complainant Mrs. Nonita Dasigan of Matam-is, Hubang, Alangalang, Leyte in the amount of P30,000, without subsidiary imprisonment in case of insolvency, and to pay the costs." [1]

Not satisfied therewith, the accused interposed this appeal alleging that the trial court committed the following errors:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE TRIAL COURT ERRED IN FINDING ACCUSED ROGELIO PARTULAN GUILTY OF RAPE CONSIDERING THAT HIS GUILT WAS NOT ESTABLISHED BEYOND REASONABLE DOUBT. [2]

The records of the case disclose the following facts:

Nonita Dasigan, 30, complainant in this case is married to Doming Dasigan with whom she has two (2) children. They reside in Sitio Matam-is, Alang-alang, Leyte. Doming Dasigan works as a farmer for Antonio and Helen Enoviso.

Accused Rogelio Partulan, also married, is the nephew of Antonio Enoviso and the compadre of the Dasigans. He had a very close friend and helper by the name of Reynaldo Daclitan.

The Alang-alang town fiesta was held on June 19, 1982. As requested of her, Nonita went to the Enoviso house at eight o'clock in the morning to help in the cooking, washing, and cleaning. At about six o'clock in the evening,

she left for home bringing along some viand given to her by Helen Enoviso. When she was by the dike they always passed by on their way home, she met the accused who was together with his friend Reynaldo Daclitan. Suddenly, the accused embraced her, then held her two arms and dragged her towards the bushes. While Reynaldo stood on guard, Nonita and the accused grappled with each other until Nonita fell down. She shouted and slapped the accused twice but the accused pointed a small bolo at her chest and threatened to kill her if she did not submit to his desires. Again, she tried to resist and even pleaded with him not to harm her but the accused continued with his threats. Then, he took off her panty, took off his pants, inserted his penis and did the push and pull movement. Upon consummation of the sexual act, the accused stood and pulled up his pants while Nonita picked up her panty and ran away towards home.

When Nonita reached their house, she immediately told the whole incident to her husband who advised her to file a complaint with the police. Since her husband could not accompany her as he had to look after the children, Nonita sought the help of the Enovisos.

As testified to by Helen Enoviso, Nonita went back to the Enoviso residence at around seven o'clock in the evening, with the front portion of her dress torn, the buttons thereof missing, her clothing and bag full of mud. Nonita then told Helen that she was raped by the accused. Then and there, the Enoviso couple accompanied Nonita to the police headquarters where an investigation was conducted. They also went to the Municipal Health Office for an examination but unfortunately the rural health officer Dr. Trinidad was drunk so he could not attend to them. That night Nonita stayed in the house of the Enovisos because she was scared to go home alone. The following morning, Nonita went to the DZRM Regional Hospital where she finally had a physical examination this time accompanied by the mother-in-law of Helen Enoviso.

Based on the above set of facts, the lower court found the accused guilty of rape. Upon a review of the whole record, We find no sufficient justification to reverse this finding.

Anent the first assigned error, We hold that the trial court did not err in giving credence to the testimony of private complainant Nonita. We find, as the record reveals, that she is a plain, sincere and honest woman who went through all the shame and humiliation of appearing in a public trial in order to exact justice for what she suffered from the hands of the accused-appellant.

To convince Us that Nonita is not a credible witness, accused-appellant enumerates several inconsistencies in her testimony.[3] He also points to the conflict between the story of Nonita that she was raped in a grassy area and that of Helen Enoviso who said that Nonita arrived in her house all muddy.[4] Furthermore, he asserts that she should have left the bag containing food to her husband and children before going back to the poblacion. According to him, her failure to leave the bag is not natural and not in accordance with the experience of mankind.[5]

We do not agree. A careful analysis of the alleged inconsistencies in Nonita's testimony mentioned by the accused-appellant does not diminish the firm conviction of this Court that she was indeed a victim of accused-appellant's uncontrollable lust for her body which led to the commission of this horrible crime. Said inconsistent statements are too minor to affect her credibility. Moreover, her allegations are substantiated by the medical findings and by the testimony of Helen Enoviso who is related to accused-appellant, the latter being the nephew of her husband.

The testimonies of Nonita and Helen Enoviso are not irreconcilable. Nonita's complete testimony discloses that she was first attacked beside the dike before she was dragged to the grassy area.[6] The area surrounding the dike must be muddy. Also, the grassy part could have been wet by rain. The crime happened in the later part of June, during the rainy season.

As regards the bag containing food, We find it more believable for Nonita to have forgotten all about it after the gruelling experience that she had. She was hurt, confused, and angry at the same time. Remembering the viand inside her bag is the least to be expected from her.

At this point, it is timely to reiterate the oft-repeated principle that conclusions as to credibility in rape cases lie heavily on the trial court.[7]

Next, accused-appellant contends that use of force as an element of rape was not established by the prosecution. We find no merit in this contention. Use of force is very clear in the following excerpts from Nonita's testimony:

"Q You stated that you were met or accosted by the accused, what did he do if ever he did anything to you?

A He embraced me and dragged me and brought me to the bushes.

Q How were you brought to the bushes after you were dragged?

A We grappled with each other.

xxxxx xxxxx xxxxx

Q From the place where you were dragged, what happened in that place?

A I was embraced then I fell down.

Q After you fell down, what did he do next?

A His small bolo was pointed to my chest and I was held by the neck.

Q At that moment while he was pointing his small bolo to your chest, what was your position, were you standing or lying down?

A I was lying down.

Q While you were lying down on the ground, what happened next?

A He took off my pantie.

Q While your pantie was taken off from you what happened next?

A He took off his pants; and placed himself on top of me.

Q Now, while he was already on top of you, what did he do next?

xxxxx xxxxx xxxxx

A He placed inside his penis inside my vagina.

Q Was it able to penetrate?

A Yes sir.

Q While his penis was inside your vagina, what did he do?

A He made a push and pull movement. (pp. 5-6, tsn, March 7, 1983)

On cross-examination:

Q How did the accused wrestle with you?

A He held me from behind with his two arms?

XXXXX XXXXX XXXXX

Q How did he hold you as you said you were being dragged?

A He held me with his two arms around me while he was behind and dragged me towards the grassy place.

XXXXX XXXXX XXXXX

Q As you were being dragged, did you not care to shout?

A I shouted, but because it was very noisy while we were wrestling with each other because there were many people in their house and they were very noisy.

XXXXX XXXXX XXXXX

Q Of course you shouted many times?

A I was able to shout only once because he immediately pointed to me a small bolo.

Q When you shouted the accused drew his small bolo and pointed at you?

A Yes, sir.

XXXXX XXXXX XXXXX

Q So when you were laid on the ground did you not shout again for help?

A I was not able to shout anymore because I was afraid he might kill me.

Q So you shouted only once?

A Yes, sir. (pp. 3-5, tsn, April 21, 1983)."[8]

The truthfulness of the above can be seen in the result of the medical examination of Nonita which the lower court aptly found -

"The physicians who examined Nonita Dasigan in their Physical Injuries Report, dated June 21, 1982, Exh. A, state that the complainant was examined and treated on June 20, 1982, at 10:49 in the morning, and she had multiple linear abrasions on the right arm, on her right forearm, right thigh, and tenderness over her anterior neck which injuries require medical attendance for a period of five to seven days. That force was used is therefore amply supported by physical evidence."[9]

Far from the assertions of the accused-appellant, it is his testimony which We find incredible. His allegation that he and Nonita were in fact sweethearts for more than a year[10] is not supported by any letter, notes or other tokens. His theory that Nonita's wounds could have been brought about by his biting her during their lovemaking[11] is preposterous. His claim that he and Nonita agreed on their tryst in the presence of Nonita's husband[12] is difficult to believe. He did not present any witness to prove that Nonita went to his house, signalled to him and even talked to him before they met when he himself declared that he was with more than five visitors at that time.[13] He failed to explain how he knew where and what time to meet her when according to him, they did not agree as to any place and time.[14] Also, he made inconsistent statements as to whether they went through with the sexual act or not.[15]

That Nonita filed the complaint against the accused-appellant in order to vindicate her honor and that of her husband since Reynaldo caught them in the act[16] is absurd. If they really had an adulterous affair, Nonita would just have kept silent inasmuch as going to the courts would expose and unduly publicize their relationship.

Lastly, We can not agree with the accused-appellant's desperate assertion that it was Reynaldo, and not he, who violated Nonita.[17] If this allegation is true, then Nonita would have charged Reynaldo in the complaint for rape instead of accused-appellant.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** in toto, with costs against accused-appellant.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Paras, JJ., concur.

- [1] Page 9, Decision; page 20, Rollo.
- [2] Page 1, Appellant's brief; page 39, Rollo.
- [3] Pages 8-13, Appellant's brief; pages 46-51, Rollo.
- [4] Page 16, Appellant's brief; page 53, Rollo.
- [5] Page 15, Appellant's brief; page 53, Rollo.
- [6] Pages 23 and 34 TSN, March 7, 1983 and April 21, 1983.
- [7] People vs. Malate, 116 SCRA 193.
- [8] Pages 5-7, Appellee's brief.
- [9] Page 9, Decision; page 20, Rollo.
- [10] Pages 71 & 73, TSN, June 21, 1985.
- [11] Page 72, TSN, June 21, 1985.
- [12] Page 80, TSN, June 21, 1985.
- [13] Pages 80-82, TSN, June 21, 1985.
- [14] Pages 80 & 85, TSN, June 21, 1985.
- [15] Pages 68, 70 & 74, TSN, March 14, 1984.
- [16] Page 16, Appellant's brief; page 54, Rollo.
- [17] Page 16, Appellant's brief; page 59, Rollo.

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