

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. JULITO NAGUITA, DEFENDANT/APPELLANT.

G.R. No. 76002. April 22, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Appellant Julito Naguita was charged with the crime of rape, on the basis of a complaint signed by Purita Naguita, in an information which read as follows:

“x x x x x x x x

That on or about the 8th day of August 1981, at 5:00 o'clock in the afternoon, more or less, in the barangay of Casinglot, Municipality of Tagoloan, Province of Misamis Oriental, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously thru force and intimidation, attack, assault and box Purita Naguita and have sexual intercourse with the said Purita Naguita, against her will and consent."

x x x x x x x x"[1]

Julito Naguita was arraigned on 3 September 1982 and entered a plea of not guilty.[2] After trial, he was found guilty of the offense charged in a decision dated 3 July 1985 of the Regional Trial Court of Cagayan de Oro City, the dispositive portion of which states in part:

"WHEREFORE, this Court finds the accused Julito Naguita guilty beyond reasonable doubt of the crime of Rape as charged in the abovequoted information, contrary to and in violation of Article 335 of the Revised Penal Code and taking into account that there are no privileged or ordinary mitigating nor aggravating circumstances attendant to the commission of the offense, this Court hereby sentences the accused to suffer the penalty of life imprisonment, together with all the accessory penalties provided for by law, and to pay the costs. The accused is further ordered to pay moral damages to the offended party in the amount of P30,000.00 without subsidiary imprisonment in case of insolvency.

x x x x x x x x"[3]

The facts of the case as established by the lower court are as follows:

"The evidence adduced by the prosecution through the testimonies of Luther Ebabacol, Toribio Empasis, (and) Dr. Cherissa R. Canete,[4] the physician who conducted the physical examination on the offended party, tends to establish that the offended party was married to the late Jimmy Naguita with whom she has seven (7) children. Jimmy, her husband, died on 23 November 1982; that on the morning of August 8, 1981, Purita Naguita, together with her husband and son, were weeding their tobacco plants at their tobacco field in Casinglot, Tagoloan, Misamis Oriental. At about 5:00 P.M., she went to her banana plantation just 100 meters from their house to find out if there were matured bananas. She brought with her a scythe. Her husband at that time went to fetch water. While she was looking up at the banana plants, the accused Julito Naguita suddenly approached her from behind and once near her, immediately clasped her mouth with his one hand, while the

other hand encircled her around her waist. She struggled to extricate herself free from his hold and was able to extract the hold of the accused which was covering her mouth. She then shouted for help for two or five times but the accused boxed her, hitting her on the diaphragm, which caused her to fall unconscious to the ground. She did not know what transpired after that and when she recovered consciousness at her house, she noticed that her vagina was dripping with semen.

Luther Ebabacol and Toribio Empasis, who were together at the residence of the offended party at the time of the incident, heard the shouts for help of Purita Naguita. At first they did not heed the cry of help, but upon hearing the last shout, they responded to the call for help and ran towards the place where the shouts originated. Luther Ebabacol was the first to arrive at the scene of the incident, but when he was still quite at a distance, he saw the accused having sexual intercourse with Purita, but upon seeing him, the accused picked up his pants and ran away. Immediately thereafter, Toribio Empasis also arrived and he instructed Luther Ebabacol to fetch the husband of Purita. In the meanwhile, he covered the vagina of Purita which was exposed with her dress already lifted. Upon arrival of Jimmy Naguita, Purita was carried to their house where she regained consciousness.

x x x x x x x x"[5]

Dr. Cherissa Canete testified on the results of the physical exam she had conducted on complainant two (2) days after the incident and authenticated a medical report she had prepared on the results thereof, which was offered as Exhibit "C" for the prosecution. The report stated that the complainant suffered abrasions at the base of the middle and ring fingers of her right hand, at the inner side of her left forearm and that she suffered a contusion on the outer side of her left leg.[6]

Appellant presented a different story before the trial court:

"On the other hand, the evidence adduced by the defense, through the testimonies of Hermanito Neri, Amelia Almaden and Julito Naguita himself, while admitting that the accused had sexual intercourse with Purita, he claimed that the same was performed with the mutual consent of the accused and Purita Naguita who were lovers. This love affair commenced on the evening of July 10, 1976, on the eve of the wedding of the niece of the accused and continued until August 8, 1981, which was their last sexual intercourse and which culminated in the filing of the present charge. Their first sexual intercourse was performed on the evening of July 10, 1976, which was triggered by the apparent advances of Purita, who pinched his side for three times when he passed near her, while she was cleaning the spices and told him to come back where she was. After cleaning the pig which they butchered that afternoon, the accused went to the place where Purita was. He was offered a glass of tuba, so in turn he gave her also another glass of tuba, which they both drank. After that and without much ado, she stepped on his feet and at the same time saying, 'You do not understand what I am doing?' to which the accused responded and said, 'We will wait for the people to leave and if you really love me, follow me.' The accused then left and true to his expectation, Purita followed him and they proceeded behind the kitchen of the house, where they embraced and kissed each other and subsequently had a sexual intercourse. From then on, their love tryst continued and on the later part of 1980, they had sexual intercourse which was witnessed on several occasions by a close friend of the accused, Hermanito Neri, whom he (the accused) at times also requested to go to Purita to arrange for their sexual meetings at their rendezvous."[7]

In this appeal, Julito Naguita assigns the following as errors in the lower court's decision:

1. The lower court erred in not holding that complainant and accused had been sweethearts since July 10, 1976 and had been used to having sexual intercourse prior to the incident in question;
2. The lower court erred in not holding that complainant and accused had sexual intercourse on August 8, 1981 in question upon their mutual consent, and;
3. The lower court erred in not acquitting the accused even on reasonable doubt and in ordering accused to pay

P30,000.00 to complainant as indemnity."[8]

The ultimate issue posed in this case is whether the lower court erred in believing the testimony of the prosecution witnesses tending to show that on 8 August 1981 appellant sexually embraced the private complainant after knocking her unconscious, and in disbelieving the claims of the defense witnesses that what had really taken place on that date was a tryst between illicit lovers.

The Court accords great respect to the factual conclusions drawn by trial courts, particularly on the matter of credibility of witnesses, since the trial judge had the opportunity of observing the deportment and demeanor of witnesses while listening to them speak, enabling him to form at first hand a judgment as to whether witnesses were telling the truth or not.[9]

Appellant's present appeal has failed to show why the Court should depart from this general rule.

Appellant seeks to establish an exception to the above general rule by contending that the trial judge overlooked a fact of substance, which would probably alter the legal conclusion drawn in this case, if it had been considered. He points out that the complainant was present in court when he and Hermanito Neri declared as defense witnesses that she shared an amorous relationship with appellant and yet the complainant never denied this allegation during her rebuttal examination. In fact, she did not even raise this matter in her rebuttal. Appellant then asks the Court to conclude that complainant's silence constitutes an admission of the truthfulness of his claim that he had a "special" relationship with her, that they had been lovers for years.[10]

The argument does not persuade. While the complainant did not specifically deny the mentioned assertion of appellant, she had certainly disputed the same by declaring to the lower court, during her direct and cross examination, that appellant had copulated with her against her will on 8 August 1981, by seizing her without warning and then knocking her unconscious with a fist blow to her belly.[11] This circumstance rules out any admission on complainant's part of the truthfulness of appellant's defense that she had consented to sex with him on that date.

More importantly, the trial judge roundly rejected appellant's claim of an amorous relationship with the complainant:

"Moreover, the testimony of witness Hermanito Neri, instead of helping the cause of the accused, did disservice to the defense, as it is not likely that married persons would allow themselves to be seen performing sexual intercourse, thus running the risk of making their illicit relationship an open secret. To top it all, the demeanor of the accused and his principal witness during their testimonies only revealed and betrayed their propensity of falsifying facts which seriously dishonored the offended party. All said, this Court find in this case the prosecution's evidence more credible than that of the defense x x x.

x x x x x x x x

x x x the evidence on record will further show that the husband of the offended party died on November 23, 1982, long before the trial of this case actually started, (actual trial started only on April 7, 1983) so that if it is true that they were intimate lovers and that the offended party was really madly in love with the accused, she then would, all of a sudden, lose her interest in further prosecuting this case, considering that there would be no more stumbling block or obstacle to their illicit relationship, her husband having already died. On the contrary, the offended party's grim determination to prosecute this case to the finish neither wavered nor faltered a bit but (sic) she braved the risk of a public trial, exposing herself publicly and in court, airing acts so distasteful and detestable to modesty, urged and impelled by the force of her earnest and honest desire of obtaining a (sic) redress and atonement of her grievance and quest for justice.

x x x x x x x x"[12]

And assuming arguendo that appellant and complainant had in the past shared an illicit relationship, such circum-stance is not a defense to a charge of rape so long as it is established that the particular instance of coitus, which is the subject of the information, took place against the woman's will, as here.[13]

Appellant also attempted to impugn the credibility of the complainant by contending that her testimony was inherently improbable because: 1) she could not have been knocked unconscious because she had been aware of falling to the ground face up; 2) her claim that she had been punched in the belly was contradicted by the absence of external signs of injury on that part of her body; and 3) she did not explain her failure to use the scythe either to ward-off the appellant or to extricate herself from his amorous clutches.[14]

Once more, the Court is not persuaded. Whether the effect of the blow to the stomach was instantaneous loss of consciousness for a few seconds after the blow, does not alter the established circumstance that appellant had used physical force to overcome her resistance to the sexual assault.

The absence of external injuries on the belly of a rape victim does not rule out the possibility that a blow had in fact been administered to the belly by the offender. Medical authorities state that such a blow is more likely to cause injury to the internal organs behind the belly, rather than leave visible signs on the epidermis of the belly itself.[15]

The complainant's failure to defend herself with the scythe she was carrying maybe readily conceded. However, under cross examination, the complainant had explained and demonstrated to the lower court's satisfaction that she could not use the instrument effectively to defend her honor. Appellant had taken her by surprise before she could react, appellant's right arm having pinned her scythe-bearing right arm above her elbow and against her side, in such a way that she could not have brandished the instrument against appellant, without endangering her own safety. In the ensuing struggle to free herself from appellant's clutches, the complainant lost her grip on the scythe and it fell away.[16]

Under these circumstances, complainant's credibility would not be affected by her failure to employ the scythe. After all, the law does not require a victim to resist unto death the sexual assault being perpetrated upon her person. All that the law requires is proof that the offender had employed such force as was sufficient to overcome the victim's resistance and that this resulted in the consumma-tion of the offense.[17]

Finally, appellant contends that the complainant had a motive to testify falsely against him because she maliciously filed the complaint to extort money from him. He had always refused to pay money to Purita because he was innocent of the charge of rape.[18]

The trouble with this contention is that it is based solely on the testimony of appellant and the trial judge considered him an unreliable witness. Moreover, though appellant claimed that the spouses Jimmy and Purita Naguita had demanded money from him through the auspices of Tagoloan Mayor Dongcoy Emamo, he failed to present the latter as a corroborating defense witness on this matter. Appellant thus failed to show by clear and convincing evidence any claimed illicit motive on the part of complainant Purita that could affect her credibility as a witness in this case.[19]

Independently of the contentions raised by appellant and considered in this appeal, the Court must observe that there is sufficient evidence of record showing to a moral certainty his culpability of the offense charged. In addition to the direct and circumstantial evidence of coerced sexual intercourse furnished by the testimonies of the prosecution witnesses, the prosecution submitted in evidence the torn dress and underwear which private complainant had worn at the time of the incident.[20] Taken, together, the testimonial and physical evidence clearly showed the force exercised upon complainant which culminated in the rape.[21]

All things considered, the only error the Court can appreciate from the decision under appeal is the trial court's improper reference to "life imprisonment" as the penalty imposable on appellant. The proper technical nomenclature, of course, is reclusion perpetua.

WHEREFORE, subject only to the abovementioned modification, the Decision of the trial court dated 3 July 1985, finding the appellant guilty beyond reasonable doubt of the crime of rape and ordering him to pay moral damages of P30,000.00, is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Record, p. 1. Although the copy of the information appearing at page eight (8) of the Rollo contains no specification of the year when the offense was committed, a duplicate original copy of the pleading appearing in the record, as quoted and cited above, contains a duly authenticated correction supplying the missing information.

[2] Record, p. 65.

[3] Decision p. 7; Rollo, p. 39.

[4] The body of the lower court's decision, as well as the record of the case, both indicate that aside from the prosecution witnesses just enumerated, the private complainant herself, Purita Naguita, was presented as a material witness for the prosecution.

[5] Decision, pp. 1-2; Rollo, pp. 33-35.

[6] Record, p. 2; TSN, 9 November 1983, pp. 6-8 and 12-13.

[7] Decision, p. 3; Rollo, p. 35.

[8] Appellant's Brief, pp. 2-3; Rollo, pp. 77-78.

[9] *People v. Magaluna*, G.R. No. 66755, 23 January 1992, p. 8.

[10] Appellant's Brief, pp. 3-4; Rollo, pp. 78-79.

[11] TSN, 17 May 1983, pp. 92-95 and 137-140.

[12] Decision, pp. 6-7; Rollo, pp. 38-39.

[13] *People v. Blance*, 45 Phil. 113, 116 (1923); *People v. Taduyo*, 154 SCRA 349 (1987); *People v. Poculan*, 167 SCRA 176, 198 (1988); see also *People v. Timbang*, 189 SCRA 279, 287 (1990).

[14] Appellant's Brief, pp. 4-6; Rollo, pp. 79-81.

[15] *People v. Feliciano*, 195 SCRA 19, 26 (1991); *People v. Renojo*, 132 SCRA 365, 375 (1984).

[16] TSN, 17 May 1983, pp. 131-133 and 135-139.

[17] See *People v. Belon*, 194 SCRA 447, 456 (1991).

[18] Appellant's Brief, p. 7; Rollo, p. 82.

[19] See *People v. Bacalzo*, 195 SCRA 557, 564 (1991).

[20] TSN, 17 May 1983, pp. 96-100; TSN, 9 November 1983, pp. 15 and 17.

[21] People v. Magaluna at p. 12.

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