

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DELFIN REYES Y LAZARO, RODOLFO MACALINAO, DAN REYES AND DODO REYES, ACCUSED-APPELLANTS.

G.R. No. 79896. July 12, 1995

Ponente: VITUG, J.

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VITUG, J.:

Accused-appellants Delfin Reyes y Lazaro, Rodolfo Macalinao, Dan Reyes and Dodo Reyes were charged with rape before the Regional Trial Court, Branch 14, Malolos, Bulacan, in an information that read:

"The undersigned Provincial Fiscal, on complaint of the offended party Milagros T. Fabian, accuses Delfin Reyes y Lazaro, Rodolfo Macalinao, Dan Reyes and Dodo Reyes of the crime of rape, penalized under the provisions of Art. 335 of the Revised Penal Code, committed as follows:

"That on or about the 17th day of August, 1982, in the municipality of Hagonoy, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Delfin Reyes y Lazaro, Rodolfo Macalinao, Dan Reyes and Dodo Reyes, conspiring, confederating together and mutually helping one another by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge of the offended party Milagros T. Fabian, a pregnant and married woman, against her will and by means of force."[1]

After trial, following the "not guilty" plea of the accused, the prosecution so presented as its witnesses the victim herself, Milagros Fabian, her husband Luis Fabian, Hagonoy police investigator Eloy Enriquez Balatbat and examining physician Dr. Hermogenes Deogracias. The trial court, giving credence to their testimony, summed up its findings thusly:

"The evidence on record shows that on August 17, 1982, the Spouses Luis Fabian and Milagros Fabian were living in Sitio Alimango, San Roque, Hagonoy, Bulacan. They are staying in a small hut by the fishpond of which Luis was the overseer. They had lived a quiet, peaceful and simple life until the evening of August 17, 1982 when the accused Delfin Reyes, Rodolfo Macalinao, Dan Reyes and Dodo Reyes arrived in their place.

"Delfin invited him to steal milkfish but he refused the invitation, then Delfin drew his cal. .45 pistol and pointed it on his temple and Dan and Rodolfo tied his hands, they were then under the shade (hulog) of the hut. Then the accused, Rodolfo Macalinao, Dan Reyes and Dodo Reyes entered the hut, tied the hands of Milagros, tore her dress and removed her panty. She pleaded to the accused not to molest her but her pleas were not heeded and the accused begun to ravish her one after the other in the presence of her husband who was more or less 1 1/2 meters away from her.

"The first to abuse her was Rodolfo Macalinao, the next was Dan Reyes and the last was Dodo Reyes. Delfin Reyes, as testified by Milagros, did not have sex with her but during the time that his three (3) companions were abusing her, Delfin Reyes pointed his pistol on Luis.

"The accused were able to consummate sexual act with her as stated by Milagros, because they were able to

insert their penies inside her vagina and she even felt it.

"That she was able to recognize all the accused, whom she identified inside the court room, because of the light that was emanating from their kerosene lamp that hanged by the door of their hut.

"That upon insistent request of the defense counsel, Milagros Fabian was ordered by the Court to re-enact in open court how she was raped by the accused to which she complied by going down the witness stand, then lie down on the floor and demonstrated the way how she was sexually abused. This is a fatal error committed by the defense counsel for re-enactment of a crime is only availed of by the prosecution to show how a crime was committed.

"After the accused had committed their heinous act, they left. Then Luis was able to loosen the tie of his hands and after freeing himself he untied the hands of his wife.

"The following morning they reported the incident to the police which fact was testified to by policeman Eloy Enriquez Balatbat of Hagonoy, Bulacan who entered the incident in the police blotter as evidenced by Exhibits 'J' and 'J-1' the investigation report.

"That on August 20, 1982 Milagros was examined, her body and genitalia by Dr. Hermogenes Deogracias and his findings show that Milagros suffered fragmented lacerations of the hymen which could have been caused by previous delivery or frequent sexual intercourse. Milagros being pregnant at the time of the incident, the lacerations of her hymen could have been caused by the multiple intercourse committed by the three (3) accused upon her. Dr. Deogracias also stated that before he examined Milagros he took a short clinical history of the case and according to Milagros she was sexually abused."[2]

The trial court was not persuaded by the defense put up by accused-appellants, and it rendered judgment convicting them of the offense charged. Hence -

"WHEREFORE, judgment is rendered, finding the accused Rodolfo Macalinao, Dan Reyes, Dodo Reyes and Delfin Reyes, the latter as co-principal by cooperation, guilty beyond reasonable doubt of the crime of rape and, each accused are hereby sentenced to a penalty of triple (3) Reclusion Perpetua.

"To indemnify jointly and severally the offended party Milagros Fabian P30,000.00 and P10,000.00 moral damages with costs.

"The bonds of the accused are hereby ordered cancelled and their immediate detention to the National Penitentiary through the Provincial Warden of Malolos, Bulacan is ordered pending review of their case by the Supreme Court."[3]

In this appeal, accused-appellants raise a number of points, concentrating themselves by and large on the question of the credibility of witnesses. We have closely gone over the records to see whether enough justification so exists as to permit a departure from the generally accepted norm that the assessment of the trial court on the issue of the probity of witnesses is to be held preponderant and greatly entitled to respect (*People vs. Lakibul*, 217 SCRA 575). The results of our examination lead us to say, once again, that the rule must be upheld. Witness the unswerving account of the victim:

"Q

After you were tied by Dan Reyes, what followed next?

"A

My dress was torn, sir.

"Q

Who torn your dress?

"A

Dodo Reyes, sir.

"Q

Now, when you said your dress was torn, what were you wearing that night madam witness?

"A

Blue dress, with faded printed flowers.

"Q

After this Dodo Reyes torn your dress, what else happened?

"A

They removed my panty, sir.

"Q

You stated they, to whom are you referring who removed your panty?

"A

Dan Reyes, Dodo Reyes and Oding Macalinao.

"Q

What followed after the . . . I withdraw that question. Were they able to remove your panty?

"A

Yes, sir.

"Q

At the time they removed your panty, were you really tied?

"A

Yes, sir.

"Q

What was your position at the time they removed your panty?

"A

I was lying down, sir.

"Q

After they have removed your panty, what followed next?

"A

They have sexual intercourse with me, sir.

"Q

Who among the four (4) accused had sexual intercourse with you first?

"A

Roding Macalinao, sir.

"Q

What were the three (3) other accused doing at the time the said Rodolfo Macalinao having a carnal knowledge with you?

"A

They were holding my feet, sir.

"Q

Who were holding your feet at the time Rodolfo Macalinao was having a carnal knowledge with you?

"A

Dan Reyes and Dodo Reyes, sir.

"Q

Have you observe what was Delfin Reyes then doing at the time Rodolfo Macalinao have a sexual intercourse with you?

"A

Yes, sir.

"Q

What was he doing then at the time?

"A

He was then poking a gun on my husband, sir.

"Q

Was Rodolfo Macalinao able to succeed in having a sexual intercourse with you?

"A

Yes sir for about 1/2 hour, sir.

"Q

Now, after Macalinao, who followed next?

"A

Dan Reyes, sir.

"Q

What were Dodo Reyes and Macalinao doing at the time Dan Reyes having a carnal knowledge with you?

"A

They were holding my hands. WITNESS NOW CHANGING HER ANSWER INTO FEET.

"Q

This Dan Reyes, was he able to have a carnal knowledge with you?

"A

Yes, for about 1/2 an hour time.

"Q

After this Dan Reyes attained his purpose who followed next?

"A

Dodo Reyes, sir.

"Q

What were Dan Reyes and Macalinao doing at the time Dodo Reyes abusing you?

"A

They were holding my feet, sir.

"Q

Was Dodo Reyes able to attain his purpose in having a carnal knowledge with you?

"A

Yes, sir.

"Q

At the time this Dodo Reyes having a carnal knowledge with you, what was Delfin Reyes then doing?

"A

He poked a gun on my husband, sir.

"Q

When these persons, rather when these three (3) accused Dodo Reyes, Dan Reyes, Rodolfo Macalinao removed your panty, did you not try to resist to them?

"A

I could not resist them nor fight them because my hands were tied at the time, sir.

"Q

How about when Rodolfo Macalinao sexually abused you, have you not resisted on this Macalinao?

"A

Because I was afraid, sir."[4]

Luis Fabian, husband of the victim, underwent a similar questioning; his testimony follows:

"Q

Mr. Witness in the course of your previous direct testimony you have alleged that your wife was raped in your presence. Now, who of these accused first raped your wife?

"A

Rodolfo Macalinao sir.

WITNESS POINTING TO RODOLFO MACALINAO.

"Q

How many times did this Rodolfo Macalinao committed rape on your wife?

"A

Only once sir.

"Q

At the time this Rodolfo Macalinao was raping your wife where were the three (3) other accused?

"A

His two (2) companions were holding my wife while Rodolfo Macalinao was abusing my wife sir.

"Q

To whom are you referring by your statement `ang nakahawak sa aking asawa?'

"A

Dan Reyes, and Dodo Reyes.

"Q

How about Delfin Reyes where was he when he was at the time poking a gun caliber .45?

How far were this Delfin Reyes in the place where your wife was raped then?

"A

More or less a meter and a half away sir.

"Q

After this Rodolfo Macalinao was through with his sexual abuse who followed next?

"A

Dan Reyes sir.

"Q

How many times did Dan Reyes committed sexual intercourse with your wife?

"A

Only once sir.

"Q

Where were the three (3) other accused at the time Dan Reyes was abusing your wife?

"A

They hold my wife one after the other sir.

"Q

To whom are you referring who hold your wife?

"A

Rodolfo Macalinao and Dodo Reyes sir.

"Q

How about Delfin Reyes, where was he at the time?

"A

We were outside of our house and Delfin Reyes was poking a gun at me sir.

"Q

Again, how far were you and Delfin Reyes when Dan Reyes was presently abusing your wife?

"A

More or less a meter and a half away sir.

"Q

After Dan Reyes was through with his abuses who followed next?

"A

Dodo Reyes sir.

"Q

At the time this Dodo Reyes was raping your wife where were the three (3) accused?

"A

They were holding my wife sir.

"Q

Who were holding your wife?

"A

Dan Reyes and Rodolfo Macalinao sir.

"Q

How about Delfin Reyes where was he at the time?

"A

He was poking a .45 caliber on me sir.

"Q

Could you examine the time interval the sexual abuse committed by the three (3) accused?

"A

I can no longer recall sir.

"Q

Why were these accused holding your wife when one of them is committing the alleged rape?

"ATTY. BUENAVENTURA:

Objection your Honor the question is misleading.

"FISCAL:

There was a statement your Honor that whenever one of the accused commit the crime the two (2) other were holding the wife.

"COURT:

Objection overruled. Witness may answer.

"A

Because my wife was struggling to get free sir.

"Q

Have you observe in what portion of the body of your wife was then held by the accused?

"A

Yes sir.

"Q

In what portion?

"A

They were trying to separate the feet of my wife sir.

"Q

At that time that this Rodolfo Macalinao was raping your wife have you observe who was holding the right foot of your wife?

"A

Yes sir.

"Q

Who?

"A

Dan Reyes sir.

"Q

Who was holding the left foot?

"A

Dodo Reyes sir.

"Q

At the time Dan Reyes was the one committing the sexual abuse who was holding the right foot of your wife?

"A

Rodolfo Macalinao sir.

"Q

How about . . . who was holding the left leg or foot of your wife?

"A

Dodo Reyes sir.

"Q

At the time that it was the turn of Dodo who was committing the rape of your wife who was holding the right foot of your wife?

"A

Dan Reyes sir.

"Q

Who was holding the other leg?

"A

Rodolfo Macalinao sir.

"Q

How about Delfin Reyes did he rape your wife?

"A

No sir he did not.

"Q

At the time that these three (3) other accused were raping your wife in succession, did you not attempt to get assistance to your wife?

"A

I could not do anything sir because at the time I was hog tied."[5]

The appellants would urge the Court to instead focus its attention to the alleged discordance in the evidence for the prosecution. Thus, while the Fabian spouses both stated that the crime had occurred between midnight and one o'clock in the morning of 17 August 1982, the defense, however, would want undue significance to be given to

what the prosecutor had casually said, i.e., that the incident took place in the evening of 17 August 1982. Clearly, the remark of the prosecutor was a mere unguarded statement, and it should not have any serious adverse impact on the testimony of the victim and her husband. Regarding the supposed inconsistency on the exact date when the report to the authorities was made, it would appear that Milagros and Luis actually went to the police station not once but twice at least, the first time on 17 August 1982 and then, again, a few days later.[6] Other alleged discrepancies, such as the specific details on how Milagros Fabian was abused or when the medical examination was conducted, hardly could be considered all that consequential. In the past, we commented, in fact, that minor incongruences would be indicative of honest and unrehearsed declarations or responses of witnesses and would thereby often enhance their credibility (*People vs. Mohado*, 227 SCRA 94).

Finally, too much is being stressed on the variance between the statement made by Luis Fabian before the police investigator and his testimony during the trial on how he and his wife were awakened. Differences in the narration of an incident between the sworn statement and the testimony of a witness are not unknown. The infirmity of an extra-judicial statement is a matter of judicial experience. An extra-judicial statement or affidavit is generally not prepared by the affiant himself but by another who uses his own language in writing the affiant's statement; hence, omissions and misunderstandings by the writer are not infrequent (*People vs. Balderama*, 226 SCRA 537; *People vs. Gapasin*, 145 SCRA 178; *People vs. Mendoza*, 105 SCRA 459; *People vs. Advincula*, 96 SCRA 875). So, also, in *People vs. Miranda*, 235 SCRA 202, we have observed:

"x x x Predictably, testimonies given during trials are much more exact and elaborate than those stated in sworn statements. Ex-parte affidavits are almost always incomplete and often inaccurate for varied reasons, at times because of partial and innocent suggestions or for want of specific inquiries. Witnesses cannot be expected everytime, except when told, to distinguish between what may be consequential and what may be mere insignificant details."

Conspiracy among the accused-appellants was clearly established. Accordingly, the trial court was correct in holding each of the conspirators liable for the criminal act of the others. The accused-appellants should, therefore, each suffer a three-fold penalty of reclusion perpetua, as well as be held solidarily liable for the civil indemnity which, by reason of the added repugnance of the bestial act being committed on a pregnant woman in the presence of her husband, is increased to P50,000.00, for each rape committed on Milagros Fabian.

WHEREFORE, based on all the foregoing considerations, the appealed decision is hereby **AFFIRMED** with the modification that the solidary civil indemnity of P50,000.00 is imposed on accused-appellants for each rape or the sum of P150,000.00.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Rollo, p. 12.

[2] Rollo, pp. 146-147.

[3] Rollo, p. 148.

[4] Milagros Fabian, TSN, 20 March 1985, pp. 10-14.

[5] Luis Fabian, TSN, 14 December 1984, pp. 7-14.

[6] TSN, 22 April 1985, p. 10; TSN, 20 March 1985, p. 19; TSN, 11 November 1985, p. 15.

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