

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BONIFACIO ANDO, JR., DEFENDANT-APPELLANT.*G.R. No. 81403. December 20, 1989*

Ponente: GANCAYCO, J.

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This is the prosecution of an army officer for allegedly raping the wife of one of his men in the presence of his aide.

The accused, Bonifacio Ando, Jr., was then a captain of the Armed Forces of the Philippines (AFP) being the supply officer and superior of Cpl. Ricardo Villanueva of Calbayog City of the 3rd Infantry Division at Laoang, Northern Samar. On August 11, 1985 while he and Cpl. Artemio Fabi were on their way from Laoang to attend a seminar at RUCA Catbalogan, Samar they arrived in Calbayog City late in the afternoon. Ando informed Villanueva that they may have to stay overnight in Villanueva's house. He handed him a P10.00 bill for viand and supper and left their luggage as they proceeded to the bus terminal. Upon verifying that there was no more transportation for Catbalogan, Samar, they returned to the Villanueva residence at 9:00 o'clock in the evening at Barangay Matobato. They were received by Martina Villanueva, the wife of Villanueva. At that time, Villanueva was not in the house as he was in Barangay Trinidad. Ando removed his trousers in the sala in front of Martina who turned away and went to the kitchen to set the table for the supper of their guests. Only Fabi ate supper. While Martina was attending to Fabi, Ando went to her and suddenly held her hands, twisting them behind her and then with his left hand holding a piece of cotton with a strong-odored substance, covered her mouth and nose and forcibly dragged and pulled her towards the bedroom. Surprised, she struggled to free herself notwithstanding her small and frail constitution as compared to Ando who was robust, big and strong. Upon noticing the commotion, Fabi admonished Ando three times to refrain from disgracing her. Martina felt weak and dizzy after smelling the cotton. Ando pushed her to the bed and removed her panty forcibly snapping its waistband and tearing it at its seam. Then he threatened her with death. Due to the threat to her life, she was seized with fear and she trembled. She was not able to shout and make a sound or resist further. Thus, Ando removed his brief, placed himself on top of her, inserted his finger into her genital and later had sexual intercourse with her against her will. They were unnaturally positioned across the bed when he inserted his penis into her vagina. After he finished ravishing her for the first time, Ando wiped her genital organ with the bed spread. Thereafter he again inserted his penis into her vagina. However, upon hearing the sound of a motorcycle going towards the house, he told her to dress up. She was weak and could hardly move so he dressed her up himself. He threatened her again with death, including her children in the threat, should she tell her husband what happened.

Fabi who was present then attested that the accused forcibly dragged and pulled Martina towards the bedroom and later had carnal knowledge with her despite his admonitions not to do so; that the accused got angry with him and continued with his lustful attack against her; that Fabi could not stand the sight of what the accused was doing to Martina, so he did not finish his supper and stepped out of the house.

Martina did not immediately reveal her misfortune to her husband that evening for fear that there might be a

bloody confrontation between them and because of the threats of the accused. It was only after the accused and Fabi left early in the following morning that Martina revealed everything to her husband. She immediately submitted herself to a medical examination at the Calbayog General Hospital wherein Dr. Jose Ong, resident physician, found as follows:

- "1. Superficial laceration 1" posterior portion vaginal canal;
2. Minimal blood coming from the O.S.;
3. Vaginal smear - negative."[1]

The couple also went to Rawis, Laoang, Samar at the Philippine Army headquarters where they filed a complaint against the accused.

In due course, and after a preliminary investigation of the matter, the complaint for the crime of rape was filed by City Fiscal at Calbayog City in the Regional Trial Court of the same city. After arraignment where the accused pleaded not guilty and the trial on the merits, a decision was rendered on October 29, 1987 convicting the accused of the crime of rape committed in the dwelling of the complainant and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the offended party, Mrs. Martina Villanueva, the sum of P12,000.00 and to pay the costs.

Not satisfied therewith, the accused now interposed this appeal to this Court alleging five (5) errors committed by the trial court the resolution of which revolves on the singular question of the credibility of the witnesses.

The appeal is devoid of merit.

Firstly, the appellant contends that the probability of any copulation is remote considering that (a) at the time, the complainant was in her menstrual period; (b) the alleged offense was committed in the presence of a companion of the appellant, Cpl. Fabi; (c) the alleged sexual congress occurred at the ground floor of the Villanueva residence where her four children and in-laws were residing and their house was only one (1) meter distance from that of Leonardo Cepeda who was then awake and smoking on the bench by the window; (d) that although Cpl. Villanueva was not at the house then, the appellant knew he merely delivered two sergeants at their camp at Sabang and would immediately return to their residence; (e) that complainant was able to meet her husband upon his arrival that evening with composure while Cpl. Fabi continued his dinner in a casual manner; and (f) the medical findings show that the vaginal smear from the complainant's private parts was free of spermatozoa.

The Court is not persuaded. While it may be true that the complainant was in her menstrual period, it appears that it did not deter the appellant from his bestial desire. Moreover, the presence of his aide and companion, Cpl. Fabi, did not bother him at all. As a matter of fact, it even emboldened him. Indeed, he got mad when Fabi tried to dissuade him from pursuing his evil designs. Obviously, the appellant lost all sense of reason. All he wanted was to be able to have carnal knowledge of the complainant.

At the time of rape it was past 9:00 o'clock. The members of the household including the children of complainant and her in-laws were already asleep. Because of the threat to kill her in addition to the fact that the complainant was weakened and felt dizzy because of what she was made to smell by the appellant, she was not able to offer any resistance or cry out for help from the members of the household and the neighborhood.

It may be likewise be true that the appellant knew that Martina's husband, Cpl. Villanueva may return any time. Apparently, the appellant wanted so much to accomplish his carnal desire towards Martina even for a fleeting moment or even for "four minutes" as the appellant computes, until the husband returned. And when her husband returned, Martina met him casually as she was threatened and directed to act normally by the appellant. Moreover,

she did not want to immediately reveal her plight to her husband because of the possible grave consequences. By the same token, if Cpl. Fabi acted casually by finishing his dinner and going to bed, thereafter, perhaps he was still making up his mind if he should. Moreover, the appellant was his superior officer and had moral ascendancy over him.

As to the absence of spermatozoa in the vaginal smear of the private part of the complainant, suffice it to say that the absence thereof does not necessarily mean that the rape was not consummated. The physical findings of the physician is to the effect that there were superficial lacerations in the vaginal canal showing that there was penetration by force. And if there was no spermatozoa that was deposited in the vagina of the complainant, it must have been because it was expelled by her menstrual flow.

The defense of the appellant through his sole testimony is a mere denial. He alleges that although he was actually present in the residence of the Villanuevas on that evening when he went to the room and took off his trousers, Martina went inside the room and told him that she was fixing his beddings, and that she apologized that they did not have a clean blanket for him. He also states that while she was fixing his bed, he was transferring his bag and pair of shoes to the upper portion of the bed. They were both facing the wall close to each other. He likewise alleges that he told her about the activities of her husband and to watch out for him as he heard he was maintaining a woman at Catbalogan and that he was always out. Martina kept mum and went out and rested in the sala.

Appellant alleges that the motive of the Villanuevas in fabricating the case against him was because way back in 1983 he recommended that Cpl. Villanueva be prosecuted for selling firearms and ammunition but the case was dropped as there was no sufficient evidence; that when he assumed office as supply officer, he abolished the gasoline allowance for the motorcycle of Villanueva and he did not supply him with combat shoes so that he was bitter about this; and that he knew of the plans of Villanueva to smuggle out arms and ammunition but he did not inform him about it but the case against Villanueva was dropped as the real culprit was prosecuted.

The Court is not convinced that there was any ill motive on the part of the Villanuevas in prosecuting the appellant. If indeed the appellant knew that he had wronged the Villanuevas he would not have even thought of staying overnight in the Villanueva residence on that fateful evening of August 11, 1985, and if the Villanuevas have any ax to grind against appellant they would not have extended the hospitality of their home or attended to the needs of the appellant and Fabi in the traditional Filipino hospitality. The alleged ill motive imputed by the appellant to the Villanuevas is imaginary and concocted and is far from credible.

The appellant also argues that the alleged force and intimidation have not been established in evidence. He claims that the version of the complainant that she was made to smell drugs by the appellant is false and malicious. It is a question of which to believe, the positive declaration of the complainant or the simple denial of the appellant. The answer is obvious: the positive assertion should be given more weight. Of course the appellant claims that Cpl. Fabi did not notice that the appellant placed cotton on the nose of the complainant. It must be because the attention of Fabi was called only after he heard the commotion when complainant was being dragged by the appellant towards the bedroom. That Fabi affirmed that he saw the appellant drag the victim to the room is clear evidence of the use of force. Indeed the victim asserted that her arm was twisted from behind by the appellant who pushed and threatened her so she did not resist any further. She was cowed into submission and she was weak and dizzy.

The argument of the appellant that the complainant freely and willingly submitted herself to the sexual act without manifesting dislike is an unconscious emergence of his ambivalent posture of denying having had sexual intercourse with the complainant in one breath; and in another, admitting the coitus but alleging that the

complainant freely and willingly submitted herself to his will. And the composure of the complainant immediately after the sexual congress does not betray the falsity of the charge as contended by appellant. It was such overwhelming fear arising from the threat of the appellant and of a possible bloody confrontation with her husband that is why she kept mum and did not show any unusual behavior to her husband.

As to the judge who penned the decision in this case who was able to hear only the evidence of the defense and not the prosecution, as it was his predecessor who heard the evidence of the prosecution, it did not thereby disqualify him from rendering a decision based on the records and transcript of the case. It may be true that he may not have the opportunity of personally assessing the credibility of the witnesses for the prosecution but he had the opportunity to observe the appellant while testifying. The record of the testimony of the prosecution witnesses can very well be assessed and compared with that of the appellant in arriving at the verdict.

The Court finds and so holds that the presumption of innocence in favor of the accused has been overturned by evidence beyond reasonable doubt on the part of the prosecution. Here is a case of a superior officer who, taking advantage of his ascendancy over one of his men and the hospitality of his family ravished his wife even in the presence of an aide. The latter was so scandalized that he mustered the nerve to dissuade him three times against pursuing his carnal designs but to no avail. Instead the appellant consummated the act not once but twice. He desisted only upon the early return of the husband. And the latter unknowingly continued to shower the appellant his hospitality. The appellant savored all of it but early the next morning he left without so much as bidding goodbye or thanking his hosts.

WHEREFORE, the decision appealed from is **AFFIRMED** in toto with the modification that the indemnity to the offended party should be increased to P30,000.00, with costs against the appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibit "B".

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