

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO ECLARINAL AND NORBERTO ORIA, DEFENDANTS,
MARCELINO ECLARINAL, DEFENDANT-APPELLANT.**

G.R. No. 83308. February 12, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the judgment[*] of the Regional Trial Court of Baguio and Benguet in Criminal Case No. 3004 finding the defendant-appellant Marcelino Eclarinal guilty of the crime of Rape and sentencing him to suffer the penalty of reclusion perpetua, to indemnify Gloria S. Casuga in the amount of P12,000.00, and to pay the costs.

The complaint for Rape was originally filed against Marcelino Eclarinal and Norberto Oria. During the trial, however, or on 4 March 1982, Marcelino Eclarinal escaped from detention,[1] but, he was recaptured in January 1985. The accused, Norberto Oria, also escaped from the Baguio City Jail, where he was confined, on 28 April 1983.[2] He has remained "at large" up to the present time so that trial proceeded against Marcelino Eclarinal only.

The incriminating facts of the case, according to the People's counsel, are as follows:

"At about 4:00 o'clock in the afternoon of October 20, 1981, Gloria Casuga, an unmarried woman with a daughter, left her residence at No. 23 Marcos Highway, Baguio City bound for Crystal Cave also located in Baguio City to look for her cousin, Cleofe Apilado. Upon reaching the corner of Crystal Cave, she met a person whom she had not known before but came to know later after the incident as Norberto Oria. Norberto Oria had just come out from a sari-sari store where he bought soft drinks. Gloria Casuga inquired from Norberto Oria whether the latter knew her cousin, Cleofe Apilado. Norberto Oria told Gloria Casuga that he would accompany Gloria in looking for Cleofe but he had to bring home first the soft drinks that he had bought. Oria requested Gloria to go with him to his residence at Assumption Road, Crystal Cave. (TSN, pp. 2-4, November 13, 1981).

Inside Oria's house, Gloria saw three (3) other male persons who were then eating snacks and one of whom she later came to know as appellant Marcelino Eclarinal. Gloria was invited to eat, but upon turning down the invitation was forced to do so. The men brought out something to drink which Gloria recognized as two bottles of gin. Gloria was requested to drink. Gloria refused but Norberto Oria, Marcelino Eclarinal and their companions forced Gloria to drink, telling her that it was an appetizer before eating food. While Marcelino Eclarinal, Norberto Oria and the other persons were drinking gin, they were also smoking marijuana, telling Gloria it was also a good appetizer (TSN, pp. 5-8, Ibid).

Gloria then asked permission to leave in order to look for her cousin but they refused. Instead, one of the companions of Norberto Oria locked the door of the house. Marcelino Eclarinal then took hold of Gloria. Gloria tried to free herself and fought back, but to no avail, as Marcelino Eclarinal pushed her into one of the rooms and locked the door of the room. Gloria shouted for help but nobody came to her rescue. Marcelino

Eclarinal then forced Gloria to lie down by pushing her to the floor which had a foam mattress, boxed her stomach and her left temple (TSN, pp. 9-11, Ibid).

As a result of said force inflicted upon her, Gloria felt dizzy, and appellant who was then kneeling on his right knee in a genuflect position, pulled down Gloria's pants with his right hand. Gloria fought back by pushing appellant. Appellant retaliated by biting her upper right arm and then her little fingers and her left thumb and at the same time bumped her head. Appellant then removed Gloria's panty and also unzipped his pants, and then went on top of Gloria. Appellant brought out his penis and tried to insert it into Gloria's private parts, but Gloria resisted and evaded the insertion by wriggling. Gloria's resistance, however, was no match to appellant's strength, as he pinned her down. Appellant was thus able to have sexual intercourse with her, having succeeded in inserting his penis into Gloria's vagina. After satisfying his lust, appellant stood up. Gloria pulled up her pants and tried to reach for the knob of the door to open it, but then the other accused Norberto Oria got inside the room and pushed her down while appellant went out of the room. Gloria shouted at Norberto not to do it as she wanted to go home to see her daughter. Oria told Gloria not to worry because he did not intend to fool her (TSN, pp. 11-14, Ibid).

Gloria tried to get out of the room, but Oria pushed her towards the mattress and tried to strangle her. Feeling so thirsty from her ordeal, Gloria told Oria that she wanted to drink, so Oria shouted to his companions outside that a glass of water be brought inside the room. Gloria by then felt too weak to fight back. Oria unzipped his pants and brought out his penis and pulled down Gloria's pants and panty. Oria was able to have sexual intercourse with Gloria (TSN, pp. 15-16, Ibid; TSN, pp. 4-6, December 11, 1981).

After Oria had satisfied his lust, Gloria was able to remove Oria's hold on her hands, and whereupon Gloria squeezed Oria's testicles, forcing the latter to fall down beside Gloria (tsn, p. 13, December 11, 1981). At that moment, Gloria pulled up her pants and panty, opened the door and ran towards the playground of the house where she met appellant Eclarinal, who tried to force Gloria to go back to the house, but Gloria picked up a stone causing appellant to run away (tsn, pp. 23-24, Ibid).

Gloria then ran towards her home but the other accused Norberto Oria, with a companion was able to overtake her near a street post with the marking 'Assumption Road'. Oria embraced her and tried again to have sexual intercourse with her by pulling her down. Gloria fought back but just the same Oria was able to pull her down. Oria embraced Gloria and kissed her lips and tried to have sexual intercourse with Gloria, who shouted to all the world for succor, that somebody was raping her. Oria asked his companion to hold Gloria's feet, but the companion refused to do so. (TSN, pp. 32-33, December 11, 1981.)

As Gloria shouted asking for help, Oria loosened his hold on Gloria, and the latter was able to stand up and ran away. She looked for a ride going to City Hall. At the junction of Marcos Highway, she flagged down a taxi, and pleaded with the driver to bring her to the City Hall (TSN, pp. 35-36, Ibid).

Upon arrival at the Baguio City Police Station, Gloria Casuga reported to the Desk Officer that she was raped at the Crystal Cave (TSN, pp. 36-38, Ibid; pp. 2-4, February 18, 1982). She was told to wait for the police car to arrive so that policemen could go with her to the place where she was raped. Later, a police car driven by Patrolman Onofre Martinez, along with his companion Pfc Ernesto Trinidad, arrived after being called by the base operator in connection with the complaint of rape lodged by Gloria Casuga. The policemen inquired from the complainant as to the persons who raped her. Complainant told the policemen that she did not know their names. The policemen and the complainant then proceeded to the Crystal Cave and upon arrival at Assumption Road, complainant pointed to the house where she was raped (TSN, p. 4, January 22, 1982, pp. 5-6, February 18, 1982).

Patrolman Martinez went to the entrance of the compound while the complainant and Pfc Ernesto Trinidad stayed in the police car. Patrolman Martinez knocked at the gate and a person opened the shutter of the compound, and the policeman requested permission to enter the house. Patrolman Martinez entered the house, followed by Pfc. Trinidad and the complainant. Inside the house, complainant saw Norberto Oria and pointed

to him as one of her abusers. (TSN, p. 5, January 22, 1982, pp. 7-8, February 18, 1982).

Inside a room of the house, the policemen retrieved one of the wooden slippers of complainant. Norberto Oria denied that he abused the complainant. Since complainant positively identified Oria as one of her rapists, the policemen invited Oria to go with them to the police station. Outside the house on their way to the police station, the policemen also recovered the other wooden slipper of complainant. (TSN, p. 7, 1982).

Oria then informed Pat. Martinez that appellant was in his house. Accordingly, Patrolman Martinez and Norberto Oria proceeded to appellant's house, while Pfc Trinidad and the complainant remained inside the police car. Patrolman Martinez woke up appellant and invited him to come with the policemen and the complainant to the police station regarding the accusation of rape against him. Upon arrival at the place where the police car was parked, the complainant pointed to appellant as one of the persons who raped her while appellant remained silent (TSN, p. 8, Ibid, pp. 14-17, Ibid). At the police station, there was another confrontation. Oria admitted that he raped complainant as appellant did it too. (TSN, p. 9, Ibid., p. 18, Ibid). Patrolman Martinez also declared that when he saw complainant in the evening of October 20, 1981, her dress was in disarray or that she was untidy (TSN, p. 19, February 18, 1982).

From the police station, complainant went to the Baguio General Hospital where she was examined by Dr. Sheilah Elizabeth Villacorta. The result of the examination is contained in her Medico-Legal Report dated October 22, 1981 (Exh. 'C', p. 147, rec., TSN, pp. 2-6-9, February 12, 1982)."[3]

The defendant-appellant Marcelino Eclarinal admitted that he and the complainant Gloria S. Casuga were present in the house of Norberto Oria on the night of 20 October 1981, at about the time the rape complained of was committed. But, he denied having raped Gloria S. Casuga. He also denied seeing anyone abuse the complainant. The trial court summarized his testimony in court, as follows:

"Accused Marcelino Eclarinal in his defense testified that on October 20, 1981, at about 6:30 in the afternoon, he went to the house of Norberto Oria in Assumption Road, Crystal Cave where he found him with two other men by the name of Alex and Dodie; that aside from Norberto Oria and the two other men, he also saw a woman with them; that he does not know the complainant Gloria Casuga; that when he arrived at Oria's house, he saw a woman drinking gin with them; that he stayed in that place for about one and a half hours or up to 8:00 o'clock in the evening; that upon his arrival, he was ordered by Oria to cook food for them to which he complied that after eating, he was ordered by Oria to go and buy liquor which (sic) almost 7:00 o'clock in the evening; that when he returned, he saw Oria and his group together with the woman enjoying music from a cassette and were conversing with each other; that he did not join them in their conversation but only served them the liquor which he bought; that he denied anything about the accusation of Casuga regarding the charge of rape attributed to him; that he works in the same place with Oria which is in the house of former Commissioner Vera; that he did not notice anything which transpired in the house from the time he arrived at 6:30 up to 8:00 o'clock in the same evening; that when he returned home, he went to sleep up to 2:00 o'clock in the morning when a policeman arrived and arrested him; that he was brought to the police department together with Oria and the woman with them (t.s.n., pp. 2-9, Hearing of August 14, 1985)."[4]

The trial court, however, gave no credence to the claim of the accused-appellant and found him guilty, as charged, because he was positively identified by the complainant as the person who locked her up in the room and, after hitting her in the stomach and left temple which made her dizzy, was able to have sexual intercourse with her against her will; that the injuries suffered by the complainant have been confirmed and reinforced by the Medico-legal report; and that "the acts of the complainant in immediately calling for a taxi and reporting the matter to the police, even leaving her slippers in the process, can only be attributed to one who has been abused of her chastity."[5]

In seeking the reversal of the judgment and his consequent acquittal from the charge of Rape, the

defendant-appellant Marcelino Eclarinal claims that the complainant's testimony is deficient and marred by grave inconsistencies and improbabilities, which has thus failed to overcome the constitutional presumption of innocence.

We find no merit in the contention. The Court is convinced that the act complained of was committed through force and intimidation, as testified to by the complainant and affirmed by the trial court. The testimony of the complainant is corroborated by other witnesses and medical findings. We find nothing unnatural nor improbable in it. She may have contradicted herself, as pointed out by the defendant-appellant in his Brief, when she first stated in her Sworn Declaration,[6] that she saw the two accused, Marcelino Eclarinal and Norberto Oria, near the sari-sari store in Crystal Cave and later testified that she saw Norberto Oria only. She explained, however, that she was nervous at the time.[7] At any rate, the contradiction is slight and refers to a minor matter which cannot negate her credibility. Complainant's sincerity is shown by her act in reporting the incident to the police immediately. She was barefooted and disheveled when she arrived at the police station.[8] Considering the inbred modesty and antipathy of a Filipina in airing in public things that affect her honor, it is hard to conceive that the complainant would assume and admit the ignominy she had undergone if it were not true. Besides, no ill-motive was shown or even intimated why she should testify falsely against the defendant-appellant, Marcelino Eclarinal, whom she met only on the occasion complained of, and impute to him the commission of so grave an offense as Rape.

The defendant-appellant also contends that it was improbable for Rape to have been committed since there were no lacerations nor sperm cells in the genital organs of the complainant despite her claim that she was successively assaulted by the two (2) accused.

The absence of fresh lacerations in the vagina of the complainant is not inconsistent with her claim that she was sexually abused by the defendant-appellant Marcelino Eclarinal against her will and consent. The female organ is an elastic membrane and the complainant was no longer a virgin when she was raped.[9]

The absence of spermatozoa in the vaginal canal is not also a legal obstacle to a finding that Rape was committed because the important consideration in Rape is penetration and not emission.[10] It may be that the sperm cells were emitted outside the vagina or that they were washed away in the menstrual flow since the complainant had just started to menstruate when the physician examined her.[11]

The defendant-appellant further contends that the force and coercion allegedly used upon the complainant are not convincing. He argues —

"Indeed, the testimony of complainant is not satisfactory and convincing. The alleged force and coercion used upon her is not so convincing. According to the complainant, accused Oria kissed her lips to lips for about fifteen (15) minutes before the sexual inter-course took place; that it took Oria about two (2) minutes to consummate the intercourse; that after the sexual intercourse, she held on tightly to the testicles of Oria and the latter did not do anything; and that while she was squeezing his testicles, he was crying that he was dying and at the same time he was embracing her to have another sexual intercourse with her (TSN, December 11, 1982)."[12]

We find nothing unnatural or improbable in the testimony of the complainant that Norberto Oria had kissed her on the lips for about fifteen (15) minutes before he was able to consummate his bestial act. Kissing the complainant on the lips was probably resorted to in order to pin down the complainant who was wriggling out from under Norberto Oria,[13] who in turn was holding her hands above her head as he tried to insert his penis into her vagina.[14] As for the squeezing of the testicles of Norberto Oria, the complainant explained that she squeezed the testicles of Norberto Oria because the latter held on to her and wanted to have another sexual intercourse with

her.[15] After she had squeezed the testicles of Oria, she was able to free herself and run out of the room.

At any rate, the foregoing incident, claimed by the defendant-appellant, Marcelino Eclarinal, to be unconvincing, occurred during the assault made upon the complainant by Norberto Oria, which is different from the criminal attack made by the defendant-appellant Marcelino Eclarinal upon the complainant. The complainant narrated in detail the attack upon her by the defendant-appellant Marcelino Eclarinal, as follows:

"Q

When the companion of Norberto closed the door, what did Norberto Oria and Marcelino Eclarinal do? if any?

A

Marcelino forced me to go to the room.

Q

How did Marcelino force you to go to the room?

A

He took hold of me and forced me to get inside the room.

Q

When he took hold of you and forced you to go inside the room, what did you do?

A

I tried to free myself, and fought with them.

Q

You said Marcelino tried to force you inside the room. Where is this room located?

A

A room inside that same house. His room.

Q

The room of?

A

The room of Norberto, I think.

Q

You said you fought back and tried to free yourself. Were you able to free yourself from the hold of Marcelino Eclarinal?

A

Marcelino forced me.

ATTY. PATI:

Objection, your Honor, we request the same to be stricken off the record because it is not responsive. The question is whether she was able to free herself.

INTERPRETER:

The answer is, "No, because Marcelino forced me inside the room and locked the door."

FISCAL DIZON:

Q

While Marcelino Eclarinal was forcing you inside the room, what did Norberto Oria and the two other companion do if any?

A

They did not say anything.

Q

How about you, what did you do?

A

I shouted for help but nobody came.

Q

What exactly were your statements in shouting?

A

I did not say any word but I just shouted.

Q

Now, you stated that Marcelino Eclarinal was able to push you inside the room and then he locked the door. After you were already inside the room with Marcelino Eclarinal and after he had locked the door, what happened inside the room if any?

A

He pushed me down because he is going - he wants to do something.

Q

Now, you said that Marcelino Eclarinal locked the door. How did he lock the door if you know?

A

He pushed the knob. He abruptly pushed the door and pushed the knob to lock it.

Q

You said that Marcelino Eclarinal tried to force you to lie down. How did he force you?

A

He pushed me and boxed my stomach. And he also bosed (sic) me on my left temple and that was when I felt dizzy.[16]

xxx xxx xxx

Q

Now, you said that Marcelino Eclarinal tried to push you inside the room. Where? To what direction did he try to push you?

A

Towards the foam mattress.

Q

After Eclarinal boxed your stomach and temple, what happened to you if any?

A

I felt dizzy and he pulled my pants and it was removed. My pants has garter on the waistline but with a belt.

Q

When he pulled your pants, what was your position? Are (sic) you standing or lying down?

A

I was in a lying position.

Q

Lying where?

A

On the mattress.

Q

And what was the position of Eclarinal when he held your pants?

FISCAL DIZON:

May we request that the witness approach the bench and demonstrate the position of Eclarinal.

INTERPRETER:

Witness demonstrating the position of Eclarinal at that time he pulled her pants, Eclarinal at that time was kneeling on his right knee in a genuflect position and the witness demonstrating that with the use of the right hand, allegedly. Eclarinal pulled down her pants.

FISCAL DIZON:

Q

While Eclarinal was in that position which you demonstrated and while he was pulling your pants what was your reaction if any?

A

I tried to fight back by pushing him and I fought back.

Q

Were you able to push him?

A

And then when I pushed him, he bit and bit my arms.

Q

What part of your body was bitten by Eclarinal?

A

He bit my little finger, the base of my left thumb, my arm and my upper left arm, and my upper right arm and then he bumped my head.

Q

And now after the accused Marcelino Eclarinal did these things to you, what else happened inside the room?

A

He was able to do it. Because of his boxing my stomach and his boxing my left temple, he was able to do what he wants (sic) to do with me.

Q

What did Mr. Marcelino Eclarinal wanted (sic) to do to you?

A

He wants (sic) to rape me.

Q

You demonstrated a while ago that while you were lying down on the mattress and the accused Marcelino Eclarinal was in a genuflecting position trying to pull your pants. My next question is, was Marcelino Eclarinal able to pull your pants?

A

Yes, sir. He was able to pull it down.

Q

After Marcelino Eclarinal succeeded in pulling your pants, what else happened?

A

He pinned me down and held my two arms above my head, that is the time when he was able to do it or take me.

Q

Let us going (sic) back to your pinning down by Marcelino Eclarinal. You testified that he was able to pin you down. Will you please demonstrate your position when you were pinned down by Marcelino Eclarinal?

INTERPRETER:

Witness demonstrating how she was pulled with the two hands of the accused.

A

That is why my head was bumped.

FISCAL DIZON:

Q

After your head was bumped, what happened next?

A

I felt dizzy but I still tried to fight back.

Q

At what particular time were you still wearing anything below your waist?

A

Immediately he removed it and that was the time when he was able to take me because I felt dizzy.

Q

Were you not using any panty at that time?

A

Yes, I had a panty on and a pair of pants.

Q

You claim that Marcelino Eclarinal was able to pull your pants. Now, after Marcelino Eclarinal succeeded in pulling your pants, what transpired next?

A

He had sexual intercourse with me.

Q

With your panty on?

A

He removed and immediately he had sexual intercourse with me.

Q

What do you mean sexual intercourse?

A

After he pulled me down and boxed me and that was the time I felt dizzy, he pulled my pants and panty down and immediately he unzipped his pants and went on top of me.

Q

Did you not struggle when he went on top of you?

A

I tried to fight back but then while fighting, I was trying to lose my strength because I was already tired and he pinned my hands.

Q

You stated that the accused Eclarinal went on top of you while in that particular position. What did he do to you if any?

A

He brought out his penis and tried to insert it but I tried to resist but he was strong and he pinned me down.

FISCAL DE GUZMAN:

May we put it on the record, Your Honor, that the witness was wiggling to show that she was trying to evade the insertion.

FISCAL DIZON:

Q

When the accused Eclarinal pinned you down, what happened next?

A

He pulled my blouse and he bit my nipples.

Q

What nipples did he bite?

A

My breast. Because if I will resist he is going to cut my mammary glands.

Q

Was that before or after Marcelino Eclarinal had brought out his penis?

A

Yes, sir. After.

Q

Now, after he bit your mammary glands, what happened next if any?

A

When he had sexual intercourse with me at that time, he bit my mammary glands. While he was having his sexual intercourse with me, he was biting my mammary glands (nipples).

Q

You said he had sexual intercourse. Do you mean to say Marcelino Eclarinal was able to insert his penis to (sic) your vagina?

A

Yes, sir.

Q

Afterwards what happened?

A

He stood up. I was still lying down.

Q

When he stood up, what did you do?

A

I was pulling up my pants and I was trying to reach for the knob of the door but Norberto was getting inside and he pushed me down.

Q

While Norberto was trying to get inside the room, where was Marcelino Eclarinal at that time?

A

Marcelino went out. Norberto let Marcelino Eclarinal get out of the room and he entered."^[17]

The trial court, therefore, committed no error in finding the defendant-appellant Marcelino Eclarinal guilty of the crime of Rape. The penalty of reclusion perpetua imposed upon said defendant-appellant, is within the range of the penalty provided for by law for said offense, and, hence, it should be affirmed. But the indemnity to be paid to the offended party should be increased to P20,000.00.

WHEREFORE, the judgment appealed from is hereby AFFIRMED with the modification above-indicated. With costs against the defendant-appellant.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Judge Leonardo M. Rivera.

[1] Original Record, pp. 152, 156.

[2] Id., p. 168.

[3] Appellee's Brief, pp. 3-12.

[4] Decision, p. 5.

[5] Id., p. 6.

[6] Exhibit A.

[7] tsn of January 2, 1982, p. 20.

[8] tsn of February 18, 1982, p. 19.

[9] tsn of February 12, 1982, p. 12.

[10] People vs. Tabago, G.R. No. 69778, November 8, 1988, 167 SCRA 65.

[11] tsn of February 12, 1982, p. 11.

[12] Appellant's Brief, p. 14.

[13] tsn of November 13, 1981, p. 16.

[14] tsn of December 11, 1981, pp. 7-8.

[15] Id., p. 13.

[16] tsn of November 13, 1981, pp. 9-12.

[17] Id., pp. 11-14.

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