

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ED FERNANDEZ AVILA, DEFENDANT-APPELLANT.*G.R. No. 84918. December 21, 1990*

Ponente: PADILLA, J.

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This is an appeal interposed by the defendant Ed Fernandez Avila from the judgment* rendered in Criminal Case No. 1548 of the Regional Trial Court at Malaybalay, Bukidnon finding him guilty of the crime of Rape and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the offended party in the amount of P50,000.00.

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

"Complainant Martina Subog was a 31-year old Manobo spinster, somewhat naive and guileless, barely four feet and eleven inches in height and eighty pounds in weight on October 4, 1976 when she claims to have been raped by accused Ed Fernandez Avila, a 23-year old dump truck driver of the public highways and resident of Camp I, Maramag, Bukidnon. At the time, complainant was a public school teacher assigned at the Sinuda Elementary School located in Kitaotao, Bukidnon and residing with Mr. and Mrs. Sotero Roque in the latter's house in Poblacion, Maramag, Bukidnon (tsn, December 11, 1978, pp. 3, 4, 18; February 3, 1988, pp. 2-3).

According to complainant Martina Subog, at about 9 o'clock in the evening of October 4, 1976, she was standing along the National Highway in front of the house of Mr. and Mrs. Tulba at Camp I, Maramag, Bukidnon, waiting for a ride home to Poblacion of Maramag. She was accompanied by her two co-teachers Mrs. Tulba and Mr. Magno. (tsn, December 11, 1978, p. 5, 47-48). Soon after, they saw a vehicle coming from Don Carlos and going towards Maramag. The vehicle was a government dump truck driven by accused Ed Fernandez Avila. Mr. Magno flagged it down. As the vehicle stopped, Mr. Magno with Martina by his side, approached the vehicle and requested the driver (accused Avila) to give Martina a ride to the Maramag town proper. Accused acceded, saying 'yes, sir', you let her ride'. (tsn, December 11, 1978, pp. 6, 8). Accused Avila then resumed the travel. That being the first time the complainant and the accused met each other, the accused introduced himself to her as 'Eddie Avila' and asked her name to which she obliged. (tsn, December 11, 1978, pp. 8-9).

When they were nearing Mr. Roque's house where complainant was residing, complainant asked the accused to stop the truck (tsn, December 11, 1978, p. 9). The accused, however, did not stop the truck and instead invited the complainant to dine at the carinderia at the market place near the Municipal Hall. Complainant declined the invitation, saying 'Never mind Dong, anyway it is already late and beside our place is already near'. (tsn, December 11, 1978, p. 10). On hearing her answer, the accused drove faster until they reached the carinderia at the market place, located half-a-kilometer away from Mr. Roque's residence (tsn, December 11, 1978, p. 10). Upon alighting from the truck, complainant told the accused: 'Thank you Dong, I'll just hike to the house of Mr. Roque because it is already near.' The accused said: 'Don't hike because you are only a woman and I'll accompany you home later on', and again invited her to take supper. Hesitating, she acceded. After taking supper, complainant thanked the accused, saying: 'Thank you Dong, I will go ahead of you.' The accused replied: 'Board on the truck and I will bring you home'. So, the complainant again boarded the truck. The

accused and one of his three companions followed suit, leaving the other two at the market place. Then the accused started moving the truck out. (tsn, December 11, 1978, pp. 10-12).

Upon reaching the crossing of Maramag and Pangantucan, the accused suddenly turned the truck toward Malaybalay, prompting the complainant to inquire: 'Dong, where is this truck bound for'. The accused allayed her apprehension by replying: 'Just for a short time because I will get something'. (tsn, December 11, 1978, p. 12). After a while, they reached Panadtalan, Maramag, where the accused swerved the truck toward the Pulangi River. Surprised, the complainant again asked the accused where the truck was bound for and requested him to stop for her to alight. The accused ignored her request and kept on running fast until they reached the bank of Pulangi River (tsn, December 11, 1978, pp. 13-14). There, the accused momentarily stopped the truck to let his companion alight therefrom and then drove to a dry land in the middle of the river where the accused finally stopped the truck (tsn, December 11, 1978, pp. 14-15).

Upon stopping the truck, the accused alighted therefrom, then approached the complainant and started touching her breasts (tsn, December 11, 1978, p. 15). She tried to evade the accused. As he still continued touching her, she bit his arm (tsn, December 11, 1978, p. 15). This angered the accused who promptly covered complainant's mouth with his palm and threatened her: 'You crazy Manobo, I will let you float on the river.' (tsn, December 11, 1978, pp. 15-16). Then the accused forcibly pulled her down from the truck, causing her to fall down to the ground on her buttocks (tsn, December 11, 1978, p. 16). Thereafter, the accused pinned her down on the ground in a lying position with his left knee pressing on her solar plexus and his hands on her shoulders, then forcibly pulled her shirt up tearing it in the process and covered with it her hands and face (tsn, December 11, 1978, pp. 16-17). By then, the complainant was already weak and exhausted and her ribs aching as if they were broke (sic) and was unable to move. (tsn, December 11, 1978, pp. 18-19). The accused still pinning her down with one hand on her chest near the neck, then with other hand held her two legs, pushed them upward on her face, and then forcibly removed her trousers, panty and bra (tsn, December 11, 1978, pp. 18-20). Thereupon, the accused put himself on top of the complainant, and tried inserting his penis into her vagina (tsn, December 11, 1978, pp. 19-20). The complainant was too weak she could not move anymore. The accused, thus, succeeded in having carnal knowledge of her. She felt pain inside her. (tsn, December 11, 1978, p. 21).

After consummating his bestial desires, the accused freed her and stood up. Moments later when the complainant regained her strength, she put on her bra, blouse and trousers (tsn, December 11, 1978, pp. 21-28). Thereafter, she got back to the dump truck and was brought home by the accused. (tsn, December 11, 1978, pp. 30-33). Upon reaching home, complainant immediately told her landlady, Mrs. Roque, that the accused had raped her. Thereupon Mr. Roque summoned PC Sgt. Salvaña, who was staying at Mr. Roque's other house nearby, to arrest the accused. Mr. Roque and Sgt. Salvaña brought the accused to the police station of Maramag. (tsn, December 11, 1978, pp. 33-35).

Early in the morning of the following day, October 5, 1976, the complainant was examined by Dr. Nemesio Gako at the Maramag Emergency Hospital (tsn, December 11, 1978, pp. 36-37; July 22, 1980, pp. 3-5). Dr. Gako issued a medical certificate (Exhibit 'F', p. 10, Record) stating, among other things, his findings, as follows:

'x x x x x

P.E. = Breasts hemispherical, bilaterally with no external injuries

noted.

= Pelvic exam.:

New hymenal lacerations at 2 o'clock, 5 o'clock and 7 o'clock. Vagina admits one finger with ease but with slight resistance with two fingers. Examining fingers with blood stains upon withdrawal.

= Thighs, with scabies bilateral medial aspect.

= Buttocks, no signs of trauma or abrasions.

Microscopic = examination for sperms:

First slide = negative

Second slide = Positive (one dead spermatozoa) some red blood cells seen in both slides.

x x x x x'

After undergoing medical examination, complainant proceeded to the Maramag Police Station and filed a complaint against the accused. His (sic) sworn statement was taken by the police on the same day. Afterwards, she filed a formal complaint with the Municipal Court of Maramag (Exhibit 'E', p. 2, Record) charging the accused of the crime of rape committed against her. (tsn, December 11, 1978, pp. 37-39)."[1]

The accused-appellant admitted having sexual intercourse with the complainant in the evening of 4 October 1976. But he denied having raped her. He claimed that he and the complainant were sweethearts and that the act was done freely and voluntarily. His version of the incident is as follows: At about 8:00 o'clock in the evening of 4 October 1976, he was driving a government dump truck from Palakatao, Quezon, Bukidnon to the Panadtalan Quarry in Maramag, Bukidnon. His companions in the truck were Vicente Empe, Jonas Kilem and Francisco Macarandan. Upon reaching Camp I, he saw two women and a man standing on the highway, near the protestant church. He recognized one of the women as his sweetheart, Martina Subog, the complainant herein, so that he stopped the truck. The complainant rode beside him in the front seat, together with his three (3) companions. The two (2) companions of the complainant were left behind.[2]

Upon reaching the house of Mr. Roque where the complainant was boarding, he invited the complainant to take supper with him. The complainant accepted the invitation and they proceeded to the carinderia near the Municipal Building of Maramag, Bukidnon.[3]

After taking supper, he asked the complainant if she would like to go with him to the Panadtalan Quarry and the complainant answered yes, if she would be brought back. The appellant agreed and they went to the quarry. Upon reaching the quarry, his three (3) male companions alighted from the truck and went to the camp, leaving him and the complainant in the truck. They then kissed, and after a while, he brought down a mat which he unfolded under the dump truck. They then laid down and had sexual intercourse. They had sexual intercourse twice that night, after which the complainant rolled the mat and went aboard the truck. Then they went to complainant's boarding house.[4]

Upon reaching the house, they were met by Mrs. Roque who demanded to know where they came from. The complainant answered that they went to take supper at the carinderia. Mrs. Roque, however, called her husband who came down with a pistol in his hand. Mr. Roque then called a PC soldier who was living in the house and together they brought him to the police station. He told the policemen at the police station that he had not committed any offense. But the policeman told him to just rest there. The next morning, the complainant arrived and filed a complaint for Rape against him.[5]

Vicente Emya, a co-worker of the accused, confirmed the appellant's claim that the appellant and the complainant were sweethearts saying that he saw the appellant embracing the complainant at the Panadtalan quarry in Maramag, Bukidnon on three (3) previous occasions.[6]

The decisive issue is whether or not, under the facts of the case, the complainant and the appellant were lovers and that the complainant had consented to have sexual intercourse with the appellant on the night of 4 October 1976.

The appellant contends that the complainant was his sweetheart at the time of the sexual intercourse in question, and cited the following reasons to bolster his claim:

- (1) the complainant did not get angry with him when he failed to stop in front of the complainant's boarding house and, instead, accepted his invitation to take supper at the carinderia;
- (2) the complainant gave her watch and umbrella to him while they were eating;
- (3) Vicente Emya declared that he saw the appellant bring the complainant to the Quarry three (3) times before the incident; and that
- (4) the complainant subsequently executed an affidavit of desistance.

The complainant, upon the other hand, vehemently denied that the appellant was her sweetheart or that she had consented to have sexual intercourse with him on the night in question. She declared that the appellant was a complete stranger to her and that she met the appellant for the first time on board the dump truck when the appellant introduced himself to her.[7]

We find no merit in the appellant's claim. His possession of the complainant's watch and umbrella is not sufficient to prove that they were sweethearts. The complainant had satisfactorily explained the appellant's possession of said articles. She said that she gave her watch to the appellant when the latter asked to see it while they were eating and promised to return it after they had finished eating. The taking was seemingly innocent and the complainant did not suspect that the appellant had base motives. Her testimony reads as follows:

"Q Do you recall that when you were already in the process of eating the driver herein took your ring?

A He took my watch.

Q He was the one in fact who got your wrist watch from your right hand?

A No, Sir, I was the one who removed it.

COURT: (Intervening)

Q Do you mean to say that you gave your wrist watch to him?

A I did not give, but because he told me, 'May I see your watch,' so I removed my watch.

Q And he kept that watch?

A Yes, Sir.

Q He did not return it to you?

A He returned it. He told me, 'I will return this after supper. Let's eat first.'

Q After supper, did he return the watch to you?

A Not yet.

Q Did you not ask for it?

A I asked for it.

Q What did he say?

A He told me, 'By and by when we will go home.'

Q Are you satisfied with his answer?

A No, Sir.

COURT:

Proceed.

ATTY. AQUINO: (Intervening)

Q Miss Subog, since the accused was not even an old acquaintance with you because that was your first time to see him and in the second offense he committed on you by keeping your wrist watch, were you not irritated?

A I was irritated.

Q Specially when he speeded the car instead of stopping you home to the house of Mr. Roque?

A Yes, Sir.

Q Did you not then maintain doubts on that particular occasion evil motives on the herein accused when he did not return your wrist watch to you?

A I did not have that in mind.

Q Even as a teacher you did not have that suspect (sic) about the motives of the accused by keeping your wrist watch?

A No, Sir."^[8]

As for the umbrella, the complainant declared that when she alighted from the dump truck, she gave her umbrella to the appellant when the latter said: "I will be the one to bring your umbrella as you alight."^[9] Surely, the appellant's possession of the wrist watch and umbrella of the complainant, under the circumstances, cannot be considered a sign or proof that the appellant and the complainant were sweethearts.

The affidavit of desistance,^[10] executed by the complainant on 19 November 1986, more than ten (10) years after the commission of the act complained of, is also not a proof that the appellant and the complainant had been lovers, for nothing is said therein that they had a previous love affair. What the complainant stated in her affidavit is that she is no longer interested in having the accused prosecuted and put to prison; and that she had already forgiven him.

The same affidavit of desistance will not also justify the dismissal of the case as it was granted only after the institution of the action.^[11] Pardon in crimes against chastity, to be effective, must come before the institution of the criminal action.^[12]

Besides, the appellant's claim is belied by the fact (a) that the complainant reported the assault on her to her landlady, Mrs. Roque, soon after their return to the house, so that the appellant was immediately brought to the police station of Maramag, Bukidnon, and (b) by the absence of motive on the part of complainant to perjure herself and impute the commission of such heinous crime to an alleged sweetheart. Such conduct, according to the Court, in one case,^[13] "is hardly the conduct of a young woman who has just been transported with ecstasy in the discovery of the pain and the sweetness and promise of a portal that is opened to a tremblingly anticipated guest."

Indeed, it is improbable for the complainant, a public school teacher, to fabricate matters and thereby undergo the travails of a public trial exposing herself to humiliation and embarrassment by unraveling nasty matters against

her virginity by lodging against her supposed sweetheart so grave and serious a charge, if not true.[14]

Moreover, the testimony of the complainant on how she was assaulted and ravished by the appellant is credible and we find nothing disparate or improbable in it. Her testimony is corroborated by the medical certificate which stated that the complainant, upon examination conducted on the morning following the assault, sustained new hymenal lacerations and the examining fingers had blood stains upon withdrawal. The complainant had resisted the appellant tenaciously in the manner she was capable of, but she could not overcome the appellant, especially after the latter had threatened her saying: "You crazy Manobo, I will let you float on the river." [15]

The trial court, therefore, did not commit error in finding the appellant guilty of the crime for which he was charged. However, the civil indemnity awarded to the complainant should, in our considered view, be eliminated in the light of the pardon extended by her to the appellant.

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

SO ORDERED.

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

* Penned by Judge Ernesto M. Mendoza.

[1] Appellee's Brief, pp. 3-10

[2] tsn of February 3, 1988, pp. 3-7

[3] Id., p. 8

[4] Id., pp. 10-14

[5] Id., pp. 15-17

[6] tsn of November 23, 1987, pp. 3-6

[7] tsn of December 11, 1978, pp. 8-9, 49-50

[8] Id., pp. 55-57

[9] Id., p. 58

[10] Exhibit 1

[11] People vs. Lor, G.R. Nos. L-47440-42, September 12, 1984; 132 SCRA 41

[12] People vs. Miranda, 57 Phil. 274

[13] People vs. Mancilla, G.R. No. 47628, May 15, 1989, 173 SCRA 373, 380-381

[14] People vs. Nunag, G.R. No. 54445, May 12, 1989, 173 SCRA 274

[15] tsn of December 11, 1978, pp. 15-16

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